SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83454; File No. SR-NYSE-2018-28)

June 15, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Make Permanent the Retail Liquidity Program Pilot, Rule 107C, Which is Currently Set to Expire on June 30, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 4, 2018, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent Rule 107C, which sets forth the Exchange's pilot Retail Liquidity Program. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

2 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent Rule 107C, which sets forth the Exchange's pilot Retail Liquidity Program (the "Program"). In support of the proposal to make the pilot Program permanent, the Exchange believes it is appropriate to provide background on the Program and an analysis of the economic benefits for retail investors and the marketplace flowing from operation of the Program.

Background

In July 2012, the Commission approved the Program on a pilot basis.[3] The purpose of the pilot was to analyze data and assess the impact of the Program on the marketplace. The pilot period was originally scheduled to end on July 31, 2013. The Exchange filed to extend the operation of the pilot on several occasions in order to prepare this rule filing. The pilot is currently set to expire on June 30, 2018.[4]

---

[3] See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55) ("RLP Approval Order"). In addition to approving the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 ("Sub-Penny Rule"), which among other things prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01. See id.

[4] See Securities Exchange Act Release No. 82230 (December 7, 2017), 82 FR 58667 (December 13, 2017) (SR-NYSE-2017-64) (extending pilot to June 30, 2018). See also Securities Exchange Act Release No. 80844 (June 1, 2017), 82 FR 26562 (June 7, 2017) (SR-NYSE-2017-26) (extending pilot to December 31, 2017); Securities Exchange Act Release No. 79493 (December 7, 2016), 81 FR 90019 (December 13, 2016) (SR-NYSE-2016-82) (extending pilot to June 30, 2017); Securities Exchange Act Release No. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR-NYSE-2016-54) (extending pilot to December 31, 2016); Securities Exchange Act Release No. 77426 (March 23, 2016),

The Exchange established the Program to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement.[5] The Program is currently limited to trades occurring at prices equal to or greater than $1.00 a share.

As described in greater detail below, under Rule 107C, a new class of market participant called Retail Liquidity Providers ("RLPs")[6] and non-RLP member organizations are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier ("RLI"), that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs and Mid-Point Passive Liquidity ("MPL") Orders.[7] The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by

---

81 FR 17533 (March 29, 2016) (SR-NYSE-2016-25) (extending pilot to August 31, 2016); Securities Exchange Act Release No. 75993 (September 28, 2015), 80 FR 59844 (October 2, 2015) (SR-NYSE-2015-41) (extending pilot to March 31, 2016); Securities Exchange Act Release No. 74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR-NYSE-2015-10) (extending pilot until September 30, 2015); Securities Exchange Act Release No. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (NYSE-2014-35) (extending pilot until March 31, 2015); and Securities Exchange Act Release No. 70096 (Aug. 2, 2013), 78 FR 48520 (Aug. 8, 2013) (SR-NYSE-2013-48) (extending pilot to July 31, 2014).

5 RLP Approval Order, 77 FR at 40674.

6 The Program also allows for RLPs to register with the Exchange. However, any firm can enter RPI orders into the system. Currently, four firms are registered as RLPs but are not registered in any symbols.

7 The Exchange adopted MPL Orders in 2014 and amended Rule 107C to specify that MPL Orders could interact with incoming, contra-side Retail Orders submitted by a RMO in the Program. See Securities Exchange Act Release No. 71330 (January 16, 2014), 79 FR 3895 (January 23, 2014) (SR-NYSE-2013-71) ("Release No. 71330").

liquidity providers.[8]

In approving the pilot, the Commission concluded that the Program was reasonably designed to benefit retail investors by providing price improvement opportunities to retail order flow. Further, while the Commission noted that the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange are not designed to permit unfair discrimination. As the Commission recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.[10]

As discussed below, the Exchange believes that the Program data supports these conclusions and that it is therefore appropriate to make the pilot Program permanent.[11]

---

8 RLP Approval Order, 77 FR at 40679.

9 15 U.S.C. 78f(b)(5).

10 RLP Approval Order, 77 FR at 40679.

11 Rule 107C has been amended several times. See Securities Exchange Act Release No. 68709 (January 23, 2013), 78 FR 6160 (January 29, 2013) (SR-NYSE-2013-04) (amending Rule 107C to clarify that Retail Liquidity Providers may enter Retail Price Improvement Orders in a non-RLP capacity for securities to which the RLP is not assigned); 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR-NYSE-2013-20) (amending Rule 107C to clarify that a Retail Member Organization may submit Retail Orders to the Program in a riskless principal capacity as well as in an agency capacity, provided that (i) the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction); 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (SR-NYSE-2013-08) (amending Rule 107C to allow Retail Member Organizations to attest that "substantially all," rather than all, orders submitted to the Program qualifies as "Retail Orders" under the Rule); Release No. 71330, 79 FR at 3895 (amending Rule 107C to incorporate MPL Orders); and 76553 (December 3, 2015), 80 FR 76607 (December 9, 2015) (SR-NYSE-2015-59) ("Release No. 76553")

Description of Pilot Rule 107C That Would Become Permanent

Definitions

Rule 107C(a) contains the following definitions:

- First, the term "Retail Liquidity Provider" is defined as a member organization that is approved by the Exchange under the Rule to act as such and to submit Retail Price Improvement Orders in accordance with the Rule.[12]
- Second, the term "Retail Member Organization" ("RMO") is defined as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.[13]
- Third, the term "Retail Order" means an agency order or a riskless principal order meeting the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a 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. A Retail Order is an Immediate or Cancel Order and may be an odd lot, round lot, or partial round lot ("PRL").[14]
- Finally, the term "Retail Price Improvement Order" means nondisplayed interest in NYSE-listed securities that is better than the best protected bid ("PBB") or best protected offer ("PBO") by at least $0.001 and that is identified as a Retail Price

---

(amending Rule 107C to distinguish between retail orders routed on behalf of other broker-dealers and retail orders that are routed on behalf of introduced retail accounts that are carried on a fully disclosed basis).

12 See Rule 107C(a)(1).

13 Id. at (2).

14 Id. at (3).

Improvement Order in a manner prescribed by the Exchange.[15]

RMO Qualifications and Application Process

Under Rule 107C(b), any member organization[16] can qualify as an RMO if it conducts a retail business or routes[17] retail orders on behalf of another broker-dealer. For purposes of Rule 107C(b), conducting a retail business includes carrying retail customer accounts on a fully disclosed basis. To become an RMO, a member organization must submit: (1) an application form; (2) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow;[18] and (3) an attestation, in a form prescribed by the Exchange, that any order submitted by the member organization as a Retail Order would meet the qualifications for such orders under Rule 107C.[19]

An RMO must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such

---

15 Id. at (4). Exchange systems prevent Retail Orders from interacting with Retail Price Improvement Orders if the RPI is not priced at least $0.001 better than the PBBO. An RPI remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RLP would only be permitted to enter a Retail Price Improvement Order for the particular security or securities to which it is assigned as RLP. An RLP is permitted, but not required, to submit RPIs for securities to which it is not assigned, and will be treated as a non-RLP member organization for those particular securities. Additionally, member organizations other than RLPs are permitted, but not required, to submit RPIs. An RPI may be an odd lot, round lot, or PRL. See id.

16 An RLP may also act as an RMO for securities to which it is not assigned, subject to the qualification and approval process established by the proposed rule.

17 See Release No. 76553, 80 FR at 76607 (clarifying that one way to qualify as an RMO is to route retail orders on behalf of other broker-dealers).

18 The supporting documentation may include sample marketing literature, Web site screenshots, other publicly disclosed materials describing the member organization's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition. See Rule 107C (b)(2)(B).

19 See id. at (b)(2)(A)-(C).

written policies and procedures must require the member organization to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of Rule 107C, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[20]

Following submission of the required materials, the Exchange provides written notice of its decision to the member organization.[21] A disapproved applicant can appeal the disapproval by the Exchange as provided in Rule 107C(4), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO can also voluntarily withdraw from such status at any time by giving written notice to the Exchange.[22]

RLP Qualifications

To qualify as an RLP under Rule 107C(c), a member organization must: (1) already be approved as a Designated Market Maker ("DMM") or Supplemental Liquidity Provider ("SLP"); (2) demonstrate an ability to meet the requirements of an RLP; (3) have mnemonics or the ability to accommodate other Exchange-supplied designations that identify to the Exchange RLP

---

[20] Id. at (b)(6).

[21] Id. at (b)(3).

[22] Id. at (b)(5).

trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.[23]

RLP Application

Under Rule 107C(d), to become an RLP, a member organization must submit an RLP application form with all supporting documentation to the Exchange, which would determine whether an applicant was qualified to become an RLP as set forth above.[24] After an applicant submits an RLP application to the Exchange with supporting documentation, the Exchange would notify the applicant member organization of its decision. The Exchange could approve one or more member organizations to act as an RLP for a particular security. The Exchange could also approve a particular member organization to act as RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.[25]

If an applicant were approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.[26] If the Exchange disapproves the application, the Exchange would provide a written notice to the member organization. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 107C(i) and/or reapply for RLP status 90 days after the disapproval notice is issued by the Exchange.[27]

---

23 Id. at (c)(1) – (4).

24 Id. at (d)(1).

25 Id. at (d)(2).

26 Id. at (d)(3).

27 Id. at (d)(4).

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under proposed NYSE Rule107C(e). The withdrawal would become effective when those securities assigned to the withdrawing RLP are reassigned to another RLP. After the Exchange receives the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice is received by the Exchange. If the reassignment of securities takes longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters concerning its previously assigned RLP securities.[28]

RLP Requirements

Under Rule 107C(f), an RLP may only enter Retail Price Improvement Orders electronically and directly into Exchange systems and facilities designated for this purpose and only for the securities to which it is assigned as RLP. An RLP entering Retail Price Improvement Orders in securities to which it is not assigned is not required to satisfy these requirements.[29]

In order to be eligible for execution fees that are lower than non-RLP rates, an RLP must maintain (1) a Retail Price Improvement Order that is better than the PBB at least five percent of the trading day for each assigned security; and (2) a Retail Price Improvement Order that is better than the PBO at least five percent of the trading day for each assigned security.[30] An RLP's five-percent requirements is calculated by determining the average percentage of time the RLP maintains a Retail Price Improvement Order in each of its RLP securities during the regular

---

28 See id. at (e).

29 Id. at (f)(1).

30 Id. at (f)(1)(A)-(B).

trading day, on a daily and monthly basis.[31] The Exchange determines whether an RLP has met this requirement by calculating the following:

- The "Daily Bid Percentage," calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;
- The "Daily Offer Percentage," calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;
- The "Monthly Average Bid Percentage," calculated for each RLP security by summing the security's "Daily Bid Percentages" for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and
- The "Monthly Average Offer Percentage," calculated for each RLP security by summing the security's "Daily Offer Percentage" for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only Retail Price Improvement Orders would be used when calculating whether an RLP is in compliance with its five-percent requirements.[32]

The five-percent requirement is not applicable in the first two calendar months a member organization operates as an RLP and takes effect on the first day of the third consecutive calendar month the member organization operates as an RLP.[33]

---

[31] Id. at (f)(2).

[32] Id. at (f)(2)(A)-(E).

Failure of RLP to Meet Requirements

Rule 107C(g) addresses the consequences of an RLP's failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP fails to meet any of the Rule 107C(f) requirements for an assigned RLP security for three consecutive months, the Exchange could, in its discretion, take one or more of the following actions:

- revoke the assignment of any or all of the affected securities from the RLP;
- revoke the assignment of unaffected securities from the RLP; or
- disqualify the member organization from its status as an RLP.[34]

The Exchange determines if and when a member organization is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange notifies an RLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange provides a written disqualification notice to the member organization.[35] A disqualified RLP could appeal the disqualification as provided in proposed Rule 107C(i) and/or reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.[36]

Failure of RMO to Abide by Retail Order Requirements

Rule 107C(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a member organization from its status as an RMO.[37] When

---

[33] Id. at (f)(3).

[34] Id. at (g)(1)(A)-(C).

[35] Id. at (2).

[36] Id. at (3).

[37] Id. at (h)(1).

disqualification determinations are made, the Exchange shall provide a written disqualification notice to the member organization.[38] A disqualified RMO could appeal the disqualification as provided in proposed Rule 107C(i) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.[39]

Appeal of Disapproval or Disqualification

Rule 107C(i) describes the appeal rights of member organizations. A member organization that disputes the Exchange's decision to disapprove it under Rule 107C(b) or (d) or disqualify it under Rule 107C(g) or (h) may request, within five business days after notice of the decision is issued by the Exchange, that a Retail Liquidity Program Panel ("RLP Panel") review the decision to determine if it was correct.[40] The RLP Panel would consist of the NYSE's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the CoHead of U.S. Listings and Cash Execution.[41] The RLP Panel would review the facts and render a decision within the time frame prescribed by the Exchange.[42] The RLP Panel can overturn or modify an action taken by the Exchange and all determinations by the RLP Panel would constitute final action by the Exchange on the matter at issue.[43]

---

38 Id. at (2).

39 Id. at (3).

40 Id. at (i)(1). In the event a member organization is disqualified from its status as an RLP pursuant to proposed Rule 107C(g), the Exchange would not reassign the appellant's securities to a different RLP until the RLP Panel has informed the appellant of its ruling. Id. at (i)(1)(A).

41 Id. at (i)(2).

42 Id. at (3).

43 Id. at (4).

Retail Liquidity Identifier

Under Rule 107C(j), the Exchange disseminates an identifier through proprietary Exchange data feeds or the Securities Information Processor ("SIP") when RPI interest priced at least $0.001 better than the PBB or PBO for a particular security is available in Exchange systems ("Retail Liquidity Identifier"). The Retail Liquidity 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.[44]

Retail Order Designations

Under Rule 107C(k), an RMO can designate how a Retail Order would interact with available contra-side interest as follows:

- A Type 1-designated Retail Order interacts only with available contra-side Retail Price Improvement Orders and MPL Orders but would not interact with other available contra-side interest in Exchange systems or route to other markets. The portion of a Type 1- designated Retail Order that does not execute against contra-side Retail Price Improvement Orders would be immediately and automatically cancelled.[45]
- A Type 2-designated Retail Order interacts first with available contra-side Retail Price Improvement Orders and MPL Orders and any remaining portion of the Retail Order would be executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to Rule 13.[46]

---

44 Id. at (j).

45 Id. at (k)(1). See note 7, supra.

46 Id. at (2).

- A Type 3-designated Retail Order interacts first with available contra-side Retail Price Improvement Orders and MPL Orders and any remaining portion of the Retail Order would be executed as an NYSE Immediate or Cancel Order pursuant to Rule 13.[47]

Priority and Order Allocation

Under Rule 107C(l), Retail Price Improvement Orders in the same security are ranked and allocated according to price then time of entry into Exchange systems. When determining the price to execute a Retail Order, Exchange systems consider all eligible RPIs and MPL Orders. If the only interest is RPIs, then the executions shall occur at the price level that completes the incoming order's execution. If the only interest is MPL Orders, the Retail Order shall execute at the midpoint of the PBBO. If both RPIs and MPL Orders are present, Exchange systems will evaluate at what price level the incoming Retail Order may be executed in full ("clean-up price"). If the clean-up price is equal to the midpoint of the PBBO, RPIs will receive priority over MPL Orders, and the Retail Order will execute against both RPIs and MPL Orders at the midpoint. If the clean-up price is worse than the midpoint of the PBBO, the Retail Order will execute first with the MPL Orders at the midpoint of the PBBO and any remaining quantity of the Retail Order will execute with the RPIs at the clean-up price. If the clean-up price is better than the midpoint of the PBBO, then the Retail Order will execute against the RPIs at the clean-up price and will ignore the MPL Orders. Any remaining unexecuted RPI interest and MPL Orders will remain available to interact with other incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with Rule 107C(k).

Examples of priority and order allocation are as follows:

---

[47] Id. at (k)(3).

Example 1:

PBBO for security ABC is $10.00 - $10.05.

RLP 1 enters a Retail Price Improvement Order to buy ABC at $10.01 for 500.

RLP 2 then enters a Retail Price Improvement Order to buy ABC at $10.02 for 500.

RLP 3 then enters a Retail Price Improvement Order to buy ABC at $10.03 for 500.

An incoming Retail Order to sell ABC for 1,000 executes first against RLP 3’s bid for 500, because it is the best priced bid, then against RLP 2's bid for 500, because it is the next best priced bid. RLP 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes at the price that completes the order's execution. In this example, the entire 1,000 Retail Order to sell executes at $10.02 because it results in a complete fill.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at $10.02 is for 100. The incoming Retail Order to sell 1,000 executes first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 100, because it is the next best priced bid. RLP 1 then receives an execution for 400 of its bid for 500, at which point the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes at the price that completes the order's execution, which is $10.01.

Example 2:

PBBO for security DEF is $10.00 - 10.01.

RLP 1 enters a Retail Price Improvement Order to buy DEF at $10.006 for 500.

RLP 2 enters a Retail Price Improvement Order to buy DEF at $10.005 for 500.

MPL 1 enters an MPL Order to buy DEF at $10.01 for 1000.

RLP 3 enters a Retail Price Improvement Order to buy DEF at $10.002 for 1000.

An incoming Retail Order to sell DEF for 2,500 arrives. The clean-up price is $10.002. Because the midpoint of the PBBO is priced better than the clean-up price, the Retail Order executes with MPL 1 for 1000 shares at $10.005. The Retail Order then executes at $10.002 against RLP 1's bid for 500, because it is the best-priced bid, then against RLP 2's bid for 500 because it is the next best-priced bid and then RLP 3 receives an execution for 500 of its bid for 1000, at which point the entire size of the Retail Order to sell 2,500 is depleted.

Assume the same facts above. An incoming Retail Order to sell DEF for 1,000 arrives. The clean-up price is $10.005. Because the clean-up price is equal to the midpoint of the PBBO, RPIs will receive priority over MPL Orders. As a result, the Retail Order executes first against RLP 1's bid for 500, because it is the best-priced bid, then against RLP 2's bid for 500 because it is the next best-priced bid, at which point the entire size of the Retail Order to sell 1,000 is depleted.[48]

Rationale for Making Pilot Permanent

In approving the Program on a pilot basis, the Commission required the Exchange to "monitor the scope and operation of the Program and study the data produced during that time with respect to such issues, and will propose any modifications to the Program that may be necessary or appropriate."[49] As part of its assessment of the Program's potential impact, the Exchange posted core weekly and daily summary data on the Exchanges' website for public investors to review,[50] and provided additional data to the Commission regarding potential investor benefits, including the level of price improvement provided by the Program. This data included statistics about participation, frequency and level of price improvement and effective

48 Id. at (l).

49 RLP Approval Order, 77 FR at 40681.

50 See https://www.nyse.com/markets/liquidity-programs#nyse-nyse-mkt-rlp.

and realized spreads.

In the RLP Approval Order, the Commission observed that the Program could promote competition for retail order flow among execution venues, and that this could benefit retail investors by creating additional price improvement opportunities for marketable retail order flow, most of which is currently executed in the Over-the-Counter ("OTC") markets without ever reaching a public exchange.[51] The Exchange sought, and believes it has achieved, the Program's goal of attracting retail order flow to the Exchange, and allowing such order flow to receive potential price improvement. As the Exchange's analysis of the Program data below demonstrates, the Program provided tangible price improvement to retail investors through a competitive pricing process. The data also demonstrates that the Program had an overall negligible impact on broader market structure.[52]

Between August 1, 2012, when the Program began, and January 2, 2018, orders totaling in excess of 6.8 billion shares were executed through the Program, providing retail investors with $12.3 million in price improvement. As Table 1 shows, during 2016, an average of 2-3 million shares per day was executed in the Program. In 2017, an average of 3-4 million shares per day were executed in the Program. During the period 2016-17, average effective spreads in RLP executions ranged between $0.012 and $0.019. Fill rates reached as high as 25.7% in May 2018. Overall price improvement averaged $0.0014 per share, approximately 40% above the minimum of $0.001.[53]

---

[51] RLP Approval Order, 77 FR at 40679.

[52] See id. at 40682.

[53] In 2016, the average price improvement reached as high as $0.0017-$0.0018.

Table 1: Summary Execution and Market Quality Statistics

Date	RPI Avg. Volume	Avg. Daily Orders	Eff. Spread	Effective/ Quoted Ratio	Price Improvement	Realized Spread	Fill Rate
Jan-16	3,257,495	11,495	$0.0167	0.736	$0.0017	$0.0051	14.7%
Feb-16	3,119,642	10,400	$0.0163	0.713	$0.0018	$0.0041	15.3%
Mar-16	2,760,731	9,179	$0.0142	0.706	$0.0018	$0.0029	16.5%
Apr-16	2,277,189	8,432	$0.0143	0.703	$0.0018	$0.0042	17.6%
May-16	1,727,219	6,931	$0.0151	0.693	$0.0019	$0.0054	16.4%
Jun-16	2,003,149	9,122	$0.0134	0.667	$0.0019	$0.0060	14.4%
Jul-16	2,265,579	7,880	$0.0126	0.668	$0.0019	$0.0034	18.1%
Aug-16	2,009,630	5,626	$0.0122	0.699	$0.0017	-$0.0019	16.4%
Sep-16	1,620,236	4,801	$0.0136	0.696	$0.0017	$0.0035	15.6%
Oct-16	2,355,292	8,055	$0.0143	0.693	$0.0017	$0.0041	19.7%
Nov-16	2,702,894	9,915	$0.0161	0.700	$0.0018	$0.0040	17.3%
Dec-16	4,380,164	15,036	$0.0142	0.710	$0.0017	$0.0034	20.5%
Jan-17	2,921,604	11,184	$0.0148	0.730	$0.0016	$0.0011	21.4%
Feb-17	2,508,810	9,801	$0.0165	0.754	$0.0015	$0.0023	20.3%
Mar-17	2,585,694	9,517	$0.0175	0.770	$0.0015	$0.0060	20.9%
Apr-17	2,875,573	10,174	$0.0156	0.764	$0.0014	$0.0056	23.5%
May-17	3,741,955	15,179	$0.0150	0.763	$0.0014	$0.0026	25.7%
Jun-17	5,040,922	17,245	$0.0155	0.688	$0.0018	$0.0046	19.2%
Jul-17	3,906,133	14,582	$0.0154	0.712	$0.0017	$0.0020	19.8%
Aug-17	3,803,586	14,841	$0.0174	0.700	$0.0018	$0.0055	19.5%
Sep-17	3,398,110	12,782	$0.0152	0.773	$0.0014	$0.0017	23.2%
Oct-17	3,839,683	13,467	$0.0156	0.773	$0.0014	$0.0022	25.2%
Nov-17	4,193,873	14,499	$0.0161	0.775	$0.0014	$0.0028	24.2%
Dec-17	3,673,405	19,036	$0.0180	0.782	$0.0014	$0.0027	19.0%

As Table 2 shows, approximately 45% of all orders in the Program in 2016-17 were for a round lot or fewer shares. More than 60% of retail orders removing liquidity from the Exchange were for 300 shares or less. Further, the number of very large orders was relatively steady, with orders larger than 7,500 shares typically accounting for 4-5% of orders received. Despite relatively low fill rates, large orders account for a sizable portion of the shares executed in the Program.

Table 2: Composition of Retail Taking Orders by Order Size Category									
	< 100	**101-300**	**301-500**	**501-1000**	**1001-2000**	**2001-4000**	**4001-7500**	**7500-15000**	**> 15000**
Jan-16	36.31%	19.06%	9.74%	11.64%	7.60%	6.48%	4.38%	2.70%	2.09%
Feb-16	35.88%	18.81%	9.96%	11.82%	7.72%	6.42%	4.31%	2.82%	2.26%
Mar-16	35.67%	18.69%	9.90%	11.83%	7.82%	6.70%	4.52%	2.92%	1.94%
Apr-16	38.22%	19.39%	9.87%	11.48%	7.16%	5.73%	3.89%	2.54%	1.73%
May-16	37.64%	19.81%	10.12%	11.57%	7.51%	5.60%	3.74%	2.35%	1.65%
Jun-16	39.46%	18.98%	9.66%	11.22%	7.13%	5.32%	3.95%	2.60%	1.68%
Jul-16	40.22%	18.59%	9.45%	11.10%	6.75%	5.40%	4.05%	2.65%	1.78%
Aug-16	33.59%	17.45%	9.24%	11.66%	8.30%	7.17%	5.71%	4.33%	2.54%
Sep-16	33.40%	17.83%	9.13%	11.55%	8.33%	7.32%	5.69%	4.17%	2.59%
Oct-16	39.50%	19.03%	9.42%	11.16%	7.33%	5.66%	3.77%	2.53%	1.59%
Nov-16	38.72%	19.67%	9.80%	11.40%	7.19%	5.27%	3.63%	2.64%	1.70%
Dec-16	39.41%	19.52%	9.41%	11.26%	7.33%	5.40%	3.55%	2.66%	1.47%
Jan-17	42.16%	19.82%	9.22%	10.62%	6.92%	4.84%	3.05%	2.08%	1.30%
Feb-17	41.90%	19.51%	9.34%	10.79%	7.03%	4.82%	3.09%	2.08%	1.44%
Mar-17	41.55%	18.98%	9.12%	11.04%	7.30%	5.18%	3.40%	2.07%	1.36%
Apr-17	44.32%	18.50%	8.55%	10.21%	6.65%	5.07%	3.31%	2.17%	1.21%
May-17	52.39%	17.82%	7.14%	8.08%	5.32%	4.03%	2.64%	1.72%	0.87%
Jun-17	44.76%	15.48%	7.53%	9.59%	6.87%	6.06%	4.67%	3.50%	1.53%
Jul-17	45.33%	15.98%	8.05%	10.21%	7.08%	5.61%	3.70%	2.62%	1.43%
Aug-17	43.83%	16.68%	8.39%	10.58%	7.48%	5.67%	3.46%	2.51%	1.41%
Sep-17	46.15%	17.81%	8.26%	9.93%	6.78%	4.85%	2.93%	2.09%	1.20%
Oct-17	45.53%	18.30%	8.47%	10.06%	6.88%	4.82%	2.79%	2.00%	1.15%
Nov-17	45.14%	17.37%	8.63%	10.37%	7.13%	5.02%	2.90%	2.15%	1.29%
Dec-17	45.96%	17.62%	8.89%	10.60%	6.62%	4.55%	2.72%	1.99%	1.05%

Tables 3 and 4 show the distribution of orders received by size and shares executed in 2016-17. During that period, the Program saw much lower execution sizes due to smaller retail providing orders (typically around 300 shares) breaking up fills and as a result of liquidity at multiple price improvement points.

Table 3: Composition of Shares Placed by Order Size Category									
	< 100	**101-300**	**301-500**	**501-1000**	**1001-2000**	**2001-4000**	**4001-7500**	**7500-15000**	**> 15000**
Jan-16	1.11%	2.17%	2.28%	5.01%	6.21%	10.14%	12.73%	14.71%	45.64%
Feb-16	1.09%	2.09%	2.25%	4.92%	6.09%	9.67%	12.01%	14.90%	46.97%
Mar-16	1.15%	2.23%	2.40%	5.28%	6.61%	10.79%	13.50%	16.37%	41.68%
Apr-16	1.45%	2.75%	2.84%	6.09%	7.21%	10.93%	13.90%	16.82%	38.02%
May-16	1.47%	2.81%	2.93%	6.16%	7.59%	10.70%	13.39%	15.81%	39.14%
Jun-16	1.43%	2.67%	2.80%	6.06%	7.29%	10.28%	14.15%	17.28%	38.04%
Jul-16	1.38%	2.50%	2.61%	5.67%	6.57%	10.05%	13.95%	16.71%	40.57%
Aug-16	0.88%	1.71%	1.86%	4.30%	5.88%	9.78%	14.44%	19.69%	41.45%
Sep-16	0.92%	1.78%	1.84%	4.24%	5.89%	10.04%	14.44%	19.38%	41.48%
Oct-16	1.60%	2.76%	2.77%	6.00%	7.52%	11.19%	13.79%	17.15%	37.21%
Nov-16	1.49%	2.70%	2.72%	5.84%	6.99%	9.77%	12.62%	16.97%	40.90%
Dec-16	1.69%	2.98%	2.88%	6.29%	7.82%	11.13%	13.57%	18.68%	34.96%
Jan-17	2.08%	3.51%	3.29%	6.89%	8.59%	11.57%	13.51%	17.30%	33.26%
Feb-17	1.96%	3.33%	3.21%	6.70%	8.39%	11.12%	13.29%	16.59%	35.40%
Mar-17	1.90%	3.16%	3.05%	6.72%	8.50%	11.64%	14.12%	15.93%	34.97%
Apr-17	2.29%	3.34%	3.10%	6.72%	8.38%	12.32%	15.07%	18.00%	30.78%
May-17	4.06%	4.02%	3.23%	6.65%	8.42%	12.26%	14.97%	17.66%	28.74%
Jun-17	1.36%	2.15%	2.15%	5.07%	6.99%	11.88%	16.71%	22.63%	31.06%
Jul-17	1.45%	2.49%	2.58%	6.02%	8.03%	12.20%	14.85%	19.55%	32.83%
Aug-17	1.52%	2.67%	2.76%	6.42%	8.79%	12.70%	14.21%	19.41%	31.50%
Sep-17	2.01%	3.29%	3.08%	6.74%	8.98%	12.38%	13.73%	18.52%	31.27%
Oct-17	1.99%	3.45%	3.21%	6.94%	9.26%	12.39%	13.30%	18.03%	31.42%
Nov-17	1.85%	3.10%	3.11%	6.80%	9.07%	12.20%	13.06%	18.30%	32.51%
Dec-17	2.06%	3.54%	3.60%	7.78%	9.43%	12.58%	13.73%	19.12%	28.16%

Table 4: Composition of Shares Executed by Order Size Category

	< 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-16	6.25%	10.48%	9.45%	17.31%	14.62%	10.14%	10.60%	8.43%	8.90%
Feb-16	5.94%	9.72%	9.20%	16.39%	13.89%	9.67%	10.88%	9.53%	11.14%
Mar-16	5.79%	9.59%	9.07%	16.56%	14.13%	10.79%	11.31%	9.99%	9.13%
Apr-16	6.84%	11.14%	10.10%	17.62%	13.89%	10.93%	10.47%	9.28%	7.38%
May-16	7.38%	11.61%	10.14%	17.20%	13.47%	10.70%	9.84%	8.47%	8.99%
Jun-16	7.10%	10.66%	9.04%	15.22%	13.52%	10.28%	11.45%	10.13%	10.13%
Jul-16	6.18%	9.52%	8.28%	14.74%	12.55%	10.05%	13.28%	11.29%	10.57%
Aug-16	4.48%	7.45%	6.93%	12.87%	12.48%	9.78%	15.50%	15.54%	10.23%
Sep-16	4.73%	7.83%	6.94%	12.86%	12.43%	10.04%	16.13%	14.42%	10.16%
Oct-16	6.76%	10.32%	8.76%	15.87%	14.13%	11.19%	11.68%	10.00%	8.23%
Nov-16	7.02%	11.19%	9.76%	17.17%	14.19%	9.77%	10.31%	8.99%	8.58%
Dec-16	6.99%	10.91%	9.22%	17.06%	15.32%	11.13%	10.68%	9.16%	6.67%
Jan-17	8.21%	12.23%	9.82%	17.25%	15.76%	11.57%	9.59%	7.24%	6.40%
Feb-17	8.20%	12.39%	10.36%	18.42%	15.80%	11.12%	9.45%	6.93%	5.64%
Mar-17	7.67%	11.72%	10.02%	19.32%	16.40%	11.64%	9.76%	6.64%	4.93%
Apr-17	8.48%	11.45%	9.57%	18.22%	15.60%	12.32%	10.32%	7.81%	4.50%
May-17	14.15%	12.70%	9.29%	16.65%	14.45%	12.26%	9.45%	7.18%	3.52%
Jun-17	5.58%	8.07%	7.39%	15.41%	14.63%	11.88%	13.89%	13.50%	6.20%
Jul-17	5.67%	9.03%	8.53%	17.83%	16.45%	12.20%	11.56%	9.71%	6.11%
Aug-17	5.78%	9.30%	8.88%	18.25%	17.51%	12.70%	10.54%	8.75%	5.72%
Sep-17	7.32%	10.97%	9.79%	18.78%	17.26%	12.38%	9.53%	7.60%	4.98%
Oct-17	6.53%	10.74%	9.74%	18.74%	17.63%	12.39%	9.21%	8.01%	5.35%
Nov-17	6.28%	10.18%	9.41%	18.28%	17.38%	12.20%	9.80%	8.44%	6.08%
Dec-17	6.50%	10.99%	10.31%	20.09%	16.89%	12.58%	9.35%	7.30%	4.60%

As Table 5 shows, during 2016-17, fill rates trended near 80% for orders up to 300 shares, while the average shares available at the inside was 300 shares. Data published to the SIP indicates when liquidity is available for retail liquidity seekers inside the spread, and on which side.

Table 5: Fill Rates by Retail Take Order Size	< 100	101-300	301-500	501-1000	1001-2000	2001-4000	4001-7500	7500-15000	> 15000
Jan-16	85.30%	72.92%	62.76%	52.36%	35.67%	20.84%	12.61%	8.68%	2.95%
Feb-16	83.81%	71.47%	62.76%	51.21%	35.07%	21.18%	13.92%	9.84%	3.65%
Mar-16	82.78%	70.92%	62.38%	51.69%	35.25%	22.06%	13.80%	10.06%	3.61%
Apr-16	83.19%	71.37%	62.58%	50.99%	33.95%	21.41%	13.27%	9.72%	3.42%
May-16	82.49%	67.65%	56.62%	45.70%	29.09%	19.75%	12.04%	8.77%	3.76%
Jun-16	71.79%	57.72%	46.59%	36.28%	26.76%	17.91%	11.69%	8.46%	3.84%
Jul-16	80.95%	68.80%	57.26%	46.92%	34.50%	24.39%	17.19%	12.20%	4.71%
Aug-16	83.54%	71.79%	61.39%	49.17%	34.92%	24.40%	17.64%	12.97%	4.06%
Sep-16	80.06%	69.04%	59.19%	47.50%	33.04%	22.58%	17.49%	11.65%	3.83%
Oct-16	83.10%	73.58%	62.22%	52.05%	36.97%	25.09%	16.67%	11.48%	4.35%
Nov-16	81.40%	71.75%	62.28%	50.90%	35.15%	22.68%	14.15%	9.18%	3.63%
Dec-16	84.73%	75.04%	65.56%	55.67%	40.18%	25.76%	16.14%	10.06%	3.91%
Jan-17	84.49%	74.69%	64.07%	53.69%	39.35%	24.97%	15.22%	8.98%	4.13%
Feb-17	84.49%	75.25%	65.39%	55.64%	38.16%	23.34%	14.40%	8.46%	3.23%
Mar-17	84.31%	77.43%	68.69%	60.00%	40.26%	24.26%	14.42%	8.70%	2.95%
Apr-17	86.84%	80.63%	72.49%	63.69%	43.71%	26.79%	16.10%	10.19%	3.44%
May-17	89.57%	81.19%	73.95%	64.31%	44.07%	26.41%	16.22%	10.45%	3.15%
Jun-17	78.80%	72.17%	66.04%	58.35%	40.20%	24.80%	15.96%	11.46%	3.83%
Jul-17	77.45%	71.84%	65.58%	58.68%	40.59%	24.56%	15.42%	9.85%	3.69%
Aug-17	74.17%	67.92%	62.76%	55.48%	38.88%	23.48%	14.48%	8.80%	3.54%
Sep-17	84.30%	77.24%	73.73%	64.64%	44.56%	25.81%	16.11%	9.51%	3.69%
Oct-17	82.84%	78.51%	76.55%	68.14%	48.06%	28.59%	17.47%	11.21%	4.30%
Nov-17	82.32%	79.42%	73.12%	65.08%	46.34%	28.08%	18.16%	11.17%	4.52%
Dec-17	81.62%	80.19%	74.12%	66.68%	46.28%	28.70%	17.60%	9.86%	4.22%

Table 6 shows the development of orders sizes received in the Program over time. Orders adding liquidity to the Exchange averaged in the mid-300 share range for most of the Program's recent history, although the median size has increased since August 2016. (The Exchange notes that the median order size is the average of the daily median order sizes across all orders received on a trade date for NYSE symbols). After averaging near 2,000 shares at times, the size of retail orders removing liquidity from the Exchange has dropped over time, with median sizes periodically exceeding 300 shares. The slightly smaller take order sizes helps explain the better overall fill rates and improved effective spreads in the Program's recent history. However, as shown by the occasional oversized orders, there remains ample liquidity and opportunity in the Program to satisfy liquidity takers with meaningful price improvement.

Table 6: Order Size Details				
	Provide Orders		Take Orders	
	Average	Median	Average	Median
Jan-16	297	157	1,941	259
Feb-16	314	191	1,958	272
Mar-16	312	182	1,787	267
Apr-16	306	176	1,523	215
May-16	294	100	1,542	217
Jun-16	314	100	1,508	207
Jul-16	323	105	1,585	202
Aug-16	340	194	2,230	338
Sep-16	338	200	2,212	336
Oct-16	357	200	1,494	204
Nov-16	382	200	1,623	212
Dec-16	367	200	1,398	206
Jan-17	361	200	1,217	199
Feb-17	350	200	1,264	200
Mar-17	360	200	1,304	200
Apr-17	353	200	1,223	189
May-17	416	200	961	105
Jun-17	370	200	1,517	190
Jul-17	355	200	1,364	180
Aug-17	360	200	1,310	196
Sep-17	391	200	1,141	164
Oct-17	444	200	1,127	172
Nov-17	422	200	1,193	184
Dec-17	395	200	1,026	195

Although the Program provides the opportunity to achieve significant price improvement, the Program has not generated significant activity. As Table 7 shows, the average daily volume for the Program has hovered in the three to four million share range, and has accounted for less than 0.1% of consolidated NYSE-listed volume in 2016-17. The Program's share of NYSE volume during that period was below 0.4%. Moreover, no symbol during the past two years achieved as much as 1.6% of their consolidated average daily volume ("CADV") in the Program, and all of the highest share symbols are low volume securities. As Table 2 shows, during the

2016-2017 period, only 1.0% of all day/symbol pairs exceeded 5% share of CADV, with another 8.2% of day/symbol pairs achieving a share of CADV between 1% and 5%. Fully 75% of all day/symbol pairs exhibited RLP share of 0.25% or less during that time. For ticker symbols that traded at least 100 days during the two-year period, more than half of all symbols over that period had less than 0.10% of their consolidated volume executed in the program, and 96% less than 0.50%. The Program's share of the total market in NYSE-listed securities is tiny considering that non-ATS activity in the U.S. equity markets, based on FINRA transparency data and NYSE Trade and Quote ("TAQ") volume statistics, is estimated to be approximately 20-25% of all US equity volume. In short, the Program represents a minor participant in the overall market to price improve marketable retail order flow. While participation was low, as noted above, retail investors that participated in the Program received price improvement on their orders, which was one of the stated goals of the Program. The NYSE therefore believes that the pilot data supports making the Program permanent.

	Table 7			
	Daily Results		Two Year Aggregate	Percentage
Distribution	Count	Percentage	Count	
> 50%	63	0.0088%	0	0.0000%
25.00%-50.00%	179	0.0251%	0	0.0000%
10.00%-25.00%	1,599	0.2238%	0	0.0000%
5.00%-10.00%	5,569	0.7795%	0	0.0000%
1.00%-5.00%	58,368	8.1696%	6	0.1733%
0.75%-1.00%	18,527	2.5932%	18	0.5198%
0.50%-0.75%	29,869	4.1807%	111	3.2053%
0.25%-0.50%	64,440	9.0194%	764	22.0618%
0.10%-0.25%	116,211	16.2657%	736	21.2532%
0,05%-0.10%	101,813	14.2504%	538	15.5357%
0.01%-0.05%	181,194	25.3611%	1,161	33.5258%
< 0.01%	136,624	19.1228%	129	3.7251%

Moreover, beyond providing a meaningful price improvement to retail investors through a competitive and transparent pricing process unavailable in non-exchange venues, the data collected during the Program supports the conclusion that the Program has not had any significant negative market impact. As set forth in Table 8, the Exchange measured the correlation between several critical market quality statistics and either RLP share of CADV, shares posted dark by providers seeking to interact with retail orders or the amount of time during the trading day that RLP liquidity was available. The correlations the Exchange measured were levels, not changes. As a result, fairly high correlation coefficients should suggest that the Program had a meaningful impact on the statistics. In no case did the Exchange observe a single correlation greater than an absolute value of 0.15, and even at the 90th percentile of all symbols, there was no correlation of even 0.30. In short, there was no measure the Exchange studied supporting the conclusion that the Program had any noticeable impact on market quality.

Table 8

Statistic 1	**Statistic 2**	**Average Correlation**	**90th Percentile Correlation**
% Time With RLP Liquidity	**Consolidated Spread**	0.0001	0.0003
% Time With RLP Liquidity	**Eff. Sprd. Ex RPI**	0.0943	0.2925
RLP Size at PBBO	**Consolidated Spread**	0.0003	0.0005
RLP Size at PBBO	**Eff. Sprd. Ex RPI**	0.0617	0.2348
RLP Share of CADV	**Eff. Sprd. Ex RPI**	0.0010	0.1091
RLP Share of CADV	**Share wtd. NBBO Spread**	0.0152	0.1357
RLP Share of CADV	**Time wtd. NBBO Spread**	0.0002	0.0002
RLP Share of CADV	**Time wtd. NYSE BBO Spread**	0.0002	0.0002

The Exchange believes that the Program was a positive experiment in attracting retail order flow to a public exchange. The order flow the Program attracted to the Exchange provided tangible price improvement to retail investors through a competitive pricing process unavailable in non-exchange venues. As such, despite the low volumes, the Exchange believes that the Program satisfied the twin goals of attracting retail order flow to the Exchange and allowing such order flow to receive potential price improvement. Moreover, the Exchange believes that the data collected during the Program supports the conclusion that the Program's overall impact on market quality and structure was not negative. Although the results of the Program highlight the substantial advantages that broker-dealers retain when managing the benefits of retail order flow, the Exchange believes that the level of price improvement guaranteed by the Program and the scant evidence that the Program negatively impacted the marketplace justifies making the Program permanent. The Exchange accordingly believes that the pilot Program's rules, as amended, should be made permanent.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[54] in general, and Section 6(b)(5) of the Act,[55] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between

[54] 15 U.S.C. § 78f(b).

[55] 15 U.S.C. § 78f(b)(5).

customers, issuers, brokers, or dealers.

The Exchange believes the proposal is consistent with these principles because it seeks to make permanent a pilot and associated rule changes that were previously approved by the Commission as a pilot for which the Exchange has subsequently provided data and analysis to the Commission, and that this data and analysis, as well as the further analysis in this filing, shows that the Program has operated as intended and is consistent with the Act. The Exchange also believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors.

The Exchange also believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because making the Program permanent would attract retail order flow to a public exchange and allow such order flow to receive potential price improvement. The data provided by the Exchange to the Commission staff demonstrates that the Program provided tangible price improvement to retail investors through a competitive pricing process unavailable in non-exchange venues and otherwise had an insignificant impact on the marketplace. The Exchange believes that making the Program permanent would encourage the additional utilization of, and interaction with, the NYSE and provide retail customers with an additional venue for price discovery, liquidity, competitive quotes, and price improvement. For the same reasons, the Exchange believes that making the Program permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that making the Program permanent would continue to promote competition for retail order flow among execution venues. The Exchange believes that the data supplied to the Commission and experience gained over nearly six years have demonstrated that the Program creates price improvement opportunities for retail orders that are equal to what would be provided under OTC internalization arrangements, thereby benefiting retail investors and increasing competition between execution venues. The Exchange also believes that making the Program permanent will promote competition between execution venues operating their own retail liquidity programs. Such competition will lead to innovation within the market, thereby increasing the quality of the national market system. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is 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-2018-28 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2018-28. 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 change that are filed with the Commission, and all written communications relating to the proposed rule change 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 the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-28, 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.[56]

Eduardo A. Aleman
Assistant Secretary

[56] 17 CFR 200.30-3(a)(12).