

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-66928; File Nos. SR-NYSE-2011-55; SR-NYSEAmex-2011-84)

May 4, 2012

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Disapprove Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, Adopting NYSE Rule 107C to Establish a Retail Liquidity Program for NYSE-Listed Securities on a Pilot Basis Until 12 Months From Implementation Date, and Adopting NYSE Amex Rule 107C to Establish a Retail Liquidity Program for NYSE Amex Equities Traded Securities on a Pilot Basis Until 12 Months From Implementation Date

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 proposal⁴ and four comments on

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); and 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 I”); 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,

the NYSE Amex proposal.⁵ On December 19, 2011, the Commission extended the time for Commission action on the proposed rule changes 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

2011 (“Angel Letter”); Jordan Wollin, dated November 29, 2011 (“Wollin Letter”); Aaron Schafter, President, Great Mountain Capital Management LLC, dated November 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 I”); 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 I”); and Al Patten, dated December 29, 2011 (“Patten Letter”).

⁵ See Knight Letter I; CFA Letter I; 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 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, dated October 19, 2011. 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, dated January 13, 2012.

consolidated response letter on January 3, 2012.⁹ On January 17, 2012, the Exchanges each filed Partial Amendment No. 1 to their proposals.¹⁰

On February 7, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes, as modified by Amendments No. 1.¹¹ On February 16, 2012, the Exchanges each filed Partial Amendment No. 2 to their proposals, which the Commission published for comment in the Federal Register on March 1, 2012 (“Notice of Partial Amendment No. 2”).¹² In response to the Order Instituting Proceedings and the Notice of Partial Amendment No. 2, the Commission received four additional comment letters on the proposals.¹³ On March 20, 2012, the Exchanges submitted a consolidated rebuttal letter in response to the

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 I”).

¹⁰ In Amendment No. 1, the Exchanges propose to modify 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. 66346, 77 FR 7628 (February 13, 2012) (“Order Instituting Proceedings”).

¹² See Securities Exchange Act Release No. 66464 (February 24, 2012), 77 FR 12629.

¹³ See Letters to the Commission from Leonard Amoruso, General Counsel, Knight Capital, Inc., dated March 7, 2012 (“Knight Letter II”); Kurt Schact, CFA, Managing Director, Rhodri Preece, CFA, Director, Capital Markets Policy, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated March 21, 2012 (“CFA Letter II”); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 23, 2012 (“SIFMA Letter II”); and Jim Toes, President and CEO, and Jennifer Green Setzenfand, Chairman, Security Traders Association, dated April 26, 2012.

Order Instituting Proceedings.¹⁴ Additionally, on April 10, 2012, the Exchanges submitted a consolidated response to the comments concerning Partial Amendments No. 2.¹⁵

Section 19(b)(2) of the Act¹⁶ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule changes not later than 180 days after the date of publication of notice of their filing. The Commission may extend the period for issuing an order approving or disapproving the proposed rule changes, however, by up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. In this case, the proposed rule changes were published for notice and comment in the Federal Register on November 9, 2011; May 7, 2012, is 180 days from that date, and July 6, 2012, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule changes so that it has sufficient time to consider the Program and the issues that commenters have raised concerning the Program. Specifically, as the Commission noted in the Order Instituting Proceedings, the Program raises several notable issues, including whether the Program is consistent with the Sub-Penny Rule and with the Quote Rule. The Commission's resolution of these issues could have an impact on overall market structure. As a result, the Commission continues to consider whether the proposed rule changes are consistent with these particular Regulation NMS Rules and with the Act.

¹⁴ See Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated March 20, 2012 (“Exchanges’ Response Letter II”).

¹⁵ See Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated April 10, 2012 (“Exchanges’ Response Letter III”).

¹⁶ 15 U.S.C. 78s(b)(2).

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁷ designates July 6, 2012, as the date by which the Commission shall either approve or disapprove the proposed rule changes (File Nos. SR-NYSE-2011-55 and SR-NYSEAmex-2011-84).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(57).