

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66059; File No. SR-NYSE-2011-67)

December 27, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending for An Additional 12 Months the Pilot Program that Provides an Exception to NYSE Rule 2B by Permitting the Exchange's Equity Ownership Interest in BIDS Holdings L.P.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 16, 2011, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 extend for an additional 12 months the January 22, 2012 expiration date of the pilot program that provides an exception to NYSE Rule 2B by permitting the Exchange's equity ownership interest in BIDS Holdings L.P. ("BIDS"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 22, 2009, the Securities and Exchange Commission (“SEC” or “Commission”) approved the governance structure proposed by the Exchange with respect to the New York Block Exchange (“NYBX”), an electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS.<sup>3</sup> The governance structure that was approved is reflected in the Limited Liability Company Agreement of New York Block Exchange LLC (the “Company”), the entity that owns and operates NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS. BIDS is the parent company of BIDS Trading, L.P. (“BIDS Trading”), which became a member of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.<sup>4</sup> First, the Exchange’s indirect ownership interest in BIDS

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<sup>3</sup> See Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR-NYSE-2008-120) (“Approval Order”).

<sup>4</sup> NYSE Rule 2B provides, in relevant part, that: “[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. . . . The term affiliate shall have the meaning specified in Rule 12b-2 under the Act.”

Trading violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,<sup>5</sup> which violates the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval was that the proposed exception from NYSE Rule 2B to permit NYSE's indirect ownership/interest in BIDS Trading and BIDS Trading's affiliation with the Company (which is an affiliate of NYSE) would be for a pilot period of 12 months.<sup>6</sup>

In discussing the pilot basis of the exception to NYSE Rule 2B, the Approval Order noted that the pilot period "will provide NYSE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted."<sup>7</sup> The original 12-month pilot period expired on January 22, 2010 and was extended for two additional 12 month periods to January 22, 2012.<sup>8</sup> While the Exchange believes that the experience to date operating under the exception to Rule 2B fully justifies making the exception

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<sup>5</sup> Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company based on their common control by BIDS. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

<sup>6</sup> See Approval Order, 74 FR at 5018.

<sup>7</sup> Id. at 5019.

<sup>8</sup> The original twelve month period was first extended by a rule filing made by the Exchange on January 11, 2010 and noticed in a release by the Commission dated January 22, 2010. See Securities Exchange Act Release No. 61409 (January 22, 2010), 75 FR 4889 (January 29, 2010) (File No. SR-NYSE-2010-04). The Exchange filed the proposed rule change for the second extension with the Commission on December 9, 2010, which was noticed in a release by the Commission dated December 14, 2010. See Securities Exchange Act Release No. 34-63545 (December 14, 2010), 75 FR 80088 (December 21, 2010) (File No. SR-NYSE-2010-82).

permanent, the Exchange now seeks to extend the ending date for the pilot program for another 12 months to January 22, 2013 to allow additional time, if necessary, for the Commission to obtain and review the information it needs in order to make its determination regarding any adverse consequences of the exception and whether a permanent exception is warranted. During the proposed extension of the pilot program period, the Exchange's current indirect ownership interest in BIDS Trading<sup>9</sup> and BIDS Trading's affiliation with the Company would continue to be permitted.

If the Commission should determine prior to the end of the extended pilot period that a permanent exception to NYSE Rule 2B is warranted, the Exchange would have the option of submitting a proposed rule change to accomplish this and simultaneously terminate the pilot program.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>12</sup> of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the

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<sup>9</sup> Another condition for the exception to NYSE Rule 2B specified in the Approval Order was that the Exchange's equity interest in BIDS must remain less than 9%, absent prior Commission approval of any increase. See id. at 5018. Subsequently, the Commission approved a proposal by the Exchange to slightly increase the ceiling on its equity ownership in BIDS to less than 10%, and that will be the applicable limitation during the extension of the pilot period. See Securities Exchange Act Release No. 61257 (December 30, 2009), 75 FR 500 (January 5, 2010) (order approving SR-NYSE-2009-116).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78.

<sup>12</sup> 15 U.S.C. 78f(b)(1).

objectives of, Section 6(b)(5)<sup>13</sup> of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In the Approval Order, the Commission determined that the proposed exception from NYSE Rule 2B to permit NYSE's indirect ownership interest in BIDS Trading and BIDS Trading's affiliation with the Company was consistent with the Act, including Section 6(b)(5) thereof.<sup>14</sup> As the basis for its determination, the Commission cited the specific limitations and conditions listed in the Approval Order to which its approval of the exception to NYSE Rule 2B was subject,<sup>15</sup> stating: "These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. . . . These conditions appear reasonably designed to promote robust and independent regulation of BIDS. . . . The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange's commercial interest in BIDS and its regulatory responsibilities with respect to BIDS."<sup>16</sup> Because these same limitations and conditions will continue to be applicable during the additional extension of the pilot period, other than the ending date of the pilot period and the aforementioned small increase in the ceiling on the Exchange's equity interest in BIDS, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act during that extension.

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Approval Order, 74 FR at 5018-5019.

<sup>15</sup> Id. at 5018.

<sup>16</sup> Id. at 5019

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>19</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> In addition, Rule 19-b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-67 on the subject line.

##### 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-2011-67. 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 such filing also will be available for inspection and copying at the 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 available publicly. All submissions should refer to File Number SR-NYSE-2011-67 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.<sup>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).