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”) and Rule 19b-4 thereunder, 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

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

\(^5\) See Knight Letter I; CFA Letter I; TD Ameritrade Letter; and letter to the Commission


\(^7\) 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.

On February 7, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes, as modified by Amendments No. 1. 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”). 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.

On March 20, 2012, the Exchanges submitted a consolidated rebuttal letter in response to the

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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.


Order Instituting Proceedings. Additionally, on April 10, 2012, the Exchanges submitted a consolidated response to the comments concerning Partial Amendments No. 2.  

Section 19(b)(2) of the Act 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.

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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”).

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, 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.

Kevin M. O’Neill
Deputy Secretary

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18 17 CFR 200.30-3(a)(57).