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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70909; File No. SR-NYSE-2013-72)

November 21, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Establish an Institutional Liquidity Program on a One-Year Pilot Basis

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on November 7, 2013, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 a one-year pilot program that would add new Rule 107D to establish an Institutional Liquidity Program ("Program" or "proposed rule change") to attract buying and selling interest in greater size to the Exchange for NYSE-listed securities by facilitating interactions between institutional customers (and others with block trading interest) and providers of liquidity exceeding minimum size requirements. The text of 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.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 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 is proposing a one-year pilot program that would add new NYSE Rule 107D to establish an Institutional Liquidity Program to attract buying and selling interest in greater size to the Exchange for NYSE-listed securities by facilitating interactions between institutional customers and others with block trading interest (collectively, "Institutional Interest") and providers of liquidity to service this type of order flow.[4] The Program offers a targeted size discovery mechanism that would enable consumers and suppliers of such liquidity to execute trades larger than the average size currently occurring on the Exchange or in most dark pools.

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[4] The Exchange will submit a separate proposal to amend its Price List in connection with the proposed Institutional Liquidity Program. Under that proposal, the Exchange expects to initially charge member organizations a fee for executions of their ILOs against OLOs and in turn would initially provide a credit or free executions to member organizations for executions of their OLOs against the ILOs of other member organizations. The Exchange expects to charge both member organizations a fee for an execution of an ILO against another ILO. The fees and credits for member organizations submitting orders to the Program will be determined based on experience with the Program in the first several months.

As set forth in more detail below, the Program at its core would depend on the interaction between two new proposed order types, the "Institutional Liquidity Order" ("ILO") and the "Oversize Liquidity Order" ("OLO"). In summary terms, ILOs would express non-displayed Institutional Interest (5,000 or more shares with $50,000 or more market value), and OLOs would express liquidity of at least 500 shares[5] seeking to interact with an ILO. The presence of OLOs in Exchange systems would be reflected in a new liquidity indicator, the Liquidity Identifier ("LI"), to be disseminated through the Consolidated Quotation System ("CQS"). The Program is a targeted size discovery mechanism designed to attract Institutional Interest through a balanced set of requirements and incentives. The Exchange believes that the size requirements, described more fully below, will stimulate the expression of Institutional Interest in Exchange systems, and will ensure that liquidity suppliers seeking to interact with such interest commit meaningful size to the effort, thereby reducing the incidence of "pinging" or probing orders. The dissemination of LIs, in effect, requires oversize liquidity suppliers and Institutional Interest to communicate the fact, but not the details, of their trading interest and is designed to stimulate further the expression of both types of interest. The Program's minimum size requirements on OLOs and optional use of Minimum Triggering Volume ("MTV") restrictions with ILOs, as described below, will reduce the incentives of using such order anticipation strategies. The Exchange believes that the incentives offered by the Program, in particular the balanced and limited segmentation of Institutional Interest and the Program's incorporation of price-size-time priority, have the potential to enhance the discovery of size on the Exchange, to thereby reduce

[5] As noted below, OLOs may have a minimum size of 300 shares for securities with an Average Daily Volume of less than one million shares. The 500 (or 300) minimum size requirement of OLOs significantly betters the dark pool average trade size of 210 shares in January 2013. ROSENBLATT SECURITIES, Trading Talk, dated March 25, 2013.

the transaction costs of investors, and, more broadly, to offer a competitive response to serious market structure concerns held by both the Exchange and the Commission.

In particular, the Program has the potential to address three such concerns. First, the Exchange has expressed increasing concern about the migration of orders entered by investors who are less informed as to short term price movements toward dark venues and away from the public markets. At the same time, increasingly small orders entered by technology-enabled, short-term liquidity suppliers have become concentrated on exchanges.[6] Similarly, the Commission has remained sharply focused on the potential degradation of prices and price discovery as a result of the growth of non-displayed venues and the isolation of displayed liquidity.[7] The size discovery mechanism and incentives of the ILP have the potential to address

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6 See Testimony of Joseph Mecane, EVP & Head of U.S. Equities, NYSE Euronext before the Subcommittee on Securities, Insurance and Investment of the Senate Committee on Banking, Housing and Urban Affairs (December 18, 2012) ("Exchanges find themselves competing more directly with Alternative Trading Systems (ATSs or dark pools) and broker internalization, which are able to employ different practices than exchanges with far less oversight and disclosure. Some of this competition is through cost, some through order handling practices, and much of it is through client segmentation whereby non-exchange venues are able to incentivize their own or third party liquidity provisions based on the nature of the person they are trading against. As a result of this advantage, large broker-dealers continue to move more order flow into their own private trading venues for a "first look" before routing on to the lit public markets. Since the implementation of Reg. NMS, we've seen two markets evolve – the lit public, regulated and accessible market versus the dark, selective and private non-transparent market."); Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3613 (January 21, 2010) ("Equity Market Structure Concept Release") ("It appears that a significant percentage of the orders of long-term investors are executed either in dark pools or at OTC market makers, while a large percentage of the trading volume in displayed trading centers is attributable to proprietary firms executing short-term trading strategies.").

7 See Securities Exchange Act Release No. 60997 (Nov. 13, 2009), 74 FR 61208, 61233 (Nov. 23, 2009) ("Dark Pool Release") ("Increasing the volume of order flow routed to public quoting markets could reward market participants for displaying their trading interest, thus leading to an increase in the display of trading interest. Such a result would be consistent with the Commission's emphasis on the need to encourage displayed liquidity – a critical reference point for investors. Moreover, increasing the volume of

this development by attracting the trading interest of investors back to the Exchange. Second and related, the investor orders that have been diverted to dark pools and broker internalization venues are, in an important sense, isolated from the displayed liquidity elsewhere in the market system. That is, unless a displayed limit order is both superior in price and a protected quote at the top of an exchange book, the likelihood that an investor order in a dark pool or internalization venue would interact with it is negligible. The danger, of course, is two-fold: the isolated order may be denied a price improved execution, and, more systemically important, the displayed limit order may receive no execution at all, undermining the critical incentive to display limit orders.[8]

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order flow directed to public quotations could increase the incentives for markets to compete by displaying the quotations that would attract such order flow."); Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577, 10578 (Feb. 28, 2000) ("Fragmentation Concept Release) ("These order flow arrangements may discourage quote competition by isolating investor order flow from investor limit orders and dealer quotes displayed in other market centers. Even when wholesale and internalizing broker-dealers execute trades at prices better than the national best bid and offer ("NBBO"), these superior transaction prices are often in part determined by formulas dependent on the NBBO."); see also Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Reg. NMS Adopting Release") ("The importance of competition among orders has long been recognized. Indeed, when Congress mandated the establishment of an NMS, it well stated this basic principle: 'Investors must be assured that they are participants in a system which maximizes the opportunities for the most willing seller to meet the most willing buyer.' To the extent that competition among orders is lessened, the quality of price discovery for all sizes of orders can be compromised."); Fragmentation Concept Release at 10580 ("[T]he existence of multiple market centers competing for order flow in the same security may isolate orders and hence reduce the opportunity for interaction of all buying and selling interest in that security. This may reduce competition on price, which is one of the most important benefits of greater interaction of buying and selling interest in an individual security.").

[8] See Dark Pool Release at 61211; see also Reg. NMS Adopting Release at 37527 ("The Commission believes, however, that the long-term strength of the NMS as a whole is best promoted by fostering greater depth and liquidity, and it follows from this that the Commission should examine the extent to which it can encourage the limit orders that provide this depth and liquidity to the market at the best prices."); Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48293 (September 12, 1996) ("Order Handling Rules Release") ("[T]he display of customer limit orders advances the national market system goal of the public availability of quotation

In contrast, liquidity attracted to the Exchange pursuant to the Program, while segmented in a balanced and limited way, would be integrated into the priority rules of the Exchange and would interact according to those rules with displayed limit orders on the Exchange.[9] Finally, the Exchange and the Commission have pointedly noted the selective pre-trade transparency of dark pools and the inadequacy of dark pool transaction reporting.[10] As discussed below, the ILP would bring enhanced pre-trade transparency to the trading interest attracted to the Program through a new liquidity indicator, as well as the more robust post-trade transparency of exchanges.

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information, as well as fair competition, market efficiency, best execution, and disintermediation.").

[9] Additionally, the Exchange believes that the Program will address complaints from buy-side firms about a lack of transparency around the rules and operations of ATSs. Unlike the Exchange's extensive rule filing requirements, ATSs are only required to file an initial operation report on Form ATS and an amendment on Form ATS when implementing a material change to the operation of the ATS or when any information on Form ATS is inaccurate. See 17 CFR 242.301(b)(2). The Exchange environment, however, offers buy-side firms the desired regulatory and operational transparency while also minimizing the transaction costs associated with the trading of block-sized trading interest.

[10] See Dark Pool Release at 61219 ("The public, however, does not have access to this valuable information concerning the best prices and sizes for NMS stocks. Rather, dark pools transmit this information only to selected market participants. In this regard, actionable IOIs can create a two-tiered level of access to information about the best prices and sizes for NMS stocks that undermines the Exchange Act objectives for a national market system. The consolidated quotation data is intended to provide a single source of information on the best prices for a listed security across all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices. This objective is not met when dark pools or other trading venues disseminate information that is functionally quite similar to quotations, yet is not included in the consolidated quotation data. . . . The lack of information concerning the ATS on which trades are executed makes it difficult, if not impossible, for the public to assess ATS trading in real-time, and to reliably identify the volume of executions in particular stocks on individual ATSs. The Commission preliminarily believes that the current level of post-trade transparency for ATSs is inadequate.").

Definitions

The Exchange proposes to adopt the following definitions under proposed NYSE Rule 107D(a).

Institutional Liquidity Order

First, the term "Institutional Liquidity Order" is defined as a limit order for NYSE-listed securities of 5,000 or more shares with a market value of at least $50,000,[11] or a child order of a recorded instruction that meets such size requirements.[12] An ILO, whether it constitutes a child order or an entire order, must be one establishing, increasing, liquidating, or decreasing a position in the subject security and may not be part of an expression of two-sided interest on the part of the account originating the order. An ILO, or the recorded parent order instruction from which it is derived, must satisfy the size requirement above independently, and size may not be aggregated across multiple member organizations[13] to satisfy the above size requirement.[14]

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[11] The Exchange notes that the size requirement is similar to other SEC and exchange rules defining block-sized trading interest. See 17 CFR 240.10b-18(a)(5)(ii) (including in the definition of block a quantity of stock that is at least 5,000 shares and has a purchase price of at least $50,000); CBOE Stock Exchange Rule 52.11 (permitting the cross of two original orders at the established bid or offer irrespective of existing interest so long as the cross transaction is (i) for at least 5,000 shares, (ii) is for a principal amount of at least $100,000, and (iii) is greater in size than any single public customer order resting on the CBSX Book at the proposed cross price).

[12] If an ILO represents a child order of a recorded parent order instruction, the Program does not require that the recorded parent order instruction be fully executed in the Program. The recorded parent order instruction may be executed in the Program, on the Exchange outside of the Program, or at other venues, as long as the recorded parent order instruction and the ILO meet the Program's requirements.

[13] The term "member organization" is defined in NYSE Rule 2(b) and includes Floor brokers acting as agents.

[14] In other words, a size-eligible recorded parent order instruction, from which child orders are derived, must be held by a single member organization. A member organization may not rely on the representation from a non-member that the non-member holds a recorded parent order instruction sufficient to meet the size requirements of the Program. But if a

An ILO, or recorded parent order instruction, that meets the minimum size requirement and receives a partial execution that reduces its size to below the minimum size requirement will not become size ineligible. Even though a member organization receives a partial execution, and then later cancels the remaining unexecuted ILO or parent order instruction, the member organization has satisfied the size requirement as long as its intent at the time of execution was to fill the 5,000 share ILO or recorded parent order instruction.[15] If a member organization no longer intends to seek a position that satisfies the above size requirements, the member organization must take appropriate steps to ensure that it cancels any unexecuted ILOs in the Program.

An ILO may be designated Immediate-or-Cancel, or entered as a Reserve Order, in which case the order or any residual unexecuted portion will remain executable against contra-side interest in accordance with this Rule. An ILO may be designated with an MTV requirement that must be met before the order is executed. The MTV will be an optional parameter designating a minimum amount of shares of a security for which the ILO will attempt to execute if there is sufficient contra-side OLO and/or ILO interest available at the ILO's limit price or better. Depending on its designation, an ILO will consider the volume on the Exchange book and/or

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single member organization has a size-eligible recorded parent order instruction, the member organization may send child orders to other member organizations to be submitted into the Program as ILOs. Member organizations receiving such size ineligible child orders may rely on the member organization holding the recorded parent order instruction with respect to the size eligibility of the recorded parent order instruction from which the child order is derived.

15 A member organization may partially cancel an ILO; however, an ILO, or recorded parent order instruction, will become size ineligible if the size of the ILO or recorded parent order instruction is reduced to below the minimum size requirement because of a partial cancellation. A partially cancelled ILO will maintain its time priority.

away markets in order to satisfy its MTV requirement.[16] If the MTV requirement cannot be met by contra-side OLO and/or ILO interest, the ILO so designated will not participate in an execution, and may be cancelled or rest non-displayed on the Exchange book, pursuant to Rule 107D(c). However, an ILO will execute even though the execution size is less than the MTV provided the MTV was met by available contra-side interest at the time the ILO attempted to execute. An execution between an ILO and an OLO or between two ILOs cannot trade through, but may trade at, a protected quotation, and cannot trade through or trade at displayed liquidity on the Exchange.

Under the Program, a member organization submitting ILOs must maintain policies and procedures reasonably designed to ensure that the above requirements are satisfied and maintain records sufficient to reconstruct in a time-sequenced manner all orders routed to the Exchange as an ILO, including how recorded parent order instructions that meet the minimum size requirement relate to child order ILOs. In particular, if a member organization is sending ILOs for its own account, it must have written policies and procedures that reflect how it documents that it has a recorded parent order that meets the above requirements. In addition, a member organization may presume that an account's intent to establish, increase, liquidate, or decrease a position is bona fide absent concrete indications to the contrary. Where circumstances indicate that an account does not intend to establish the required position, member organizations should make reasonable inquiry and follow up appropriately. For instance, the following circumstances may indicate that an account does not intend to establish, increase, liquidate, or decrease a position consistent with the Program:

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[16] As explained below, an ILO may be designated as Type 1 or Type 2. A Type 1-designated ILO will consider volume on the Exchange book in order to satisfy its MTV requirement. A Type 2-designated ILO will consider volume on the Exchange book and away markets in order to satisfy its MTV requirement.

- The account attempts to enter contemporaneous orders in the same security on both sides of the market;
- The account enters a pattern of orders and cancellations apparently designed to implement a market-making or spread-trading strategy; or
- The account enters a pattern of cancellations that consistently produces positions of a size that are less than the size requirements of the Program.

Member organizations receiving size ineligible child orders may rely on the member organization holding the recorded parent order instruction with respect to the size eligibility of the recorded parent order instruction from which the child order is derived. The member organization receiving the child order will not be responsible for the failure of the recorded parent order instruction to meet the requirements of the Program absent circumstances indicating the reliance was unreasonable. For example, if a member organization receiving the child orders knew that its customer member organization primarily engaged in a pattern and practice of trading the same security on both sides of the market, it would not be reasonable to assume that size ineligible child orders received from such member organization would comply with the Program's rules, unless they had information that such trading did not follow the customer member organization's general trading strategy. The Exchange, with FINRA, will monitor activity indicative of non-compliance with the Program's rules and will exclude non-compliant member organizations when necessary to ensure a proper functioning of the Program.

Oversize Liquidity Order

Second, the term "Oversize Liquidity Order" is defined as a non-displayed limit order for NYSE-listed securities with a minimum size of 500 shares.[17] An OLO that meets the minimum size requirement and receives a partial execution that reduces its size to below the applicable minimum size requirements will still be eligible to interact with incoming ILOs. An OLO will become size ineligible if the size of the OLO is reduced below the minimum size requirement because of a partial cancellation. An OLO may be priced at, inside, or outside the PBBO, or as non-displayed Primary Pegging Interest pursuant to Rule 13. OLOs will be ranked according to price-size-time priority. OLOs may interact only with ILOs.

As discussed below, OLOs and ILOs will be ranked and allocated according to price then size then time of entry into Exchange systems[18] and therefore without regard to whether the size entered is an odd lot, round lot or part of round lot. Executions between an ILO and an OLO will take into account displayed liquidity available at the same price on the Exchange book, such that displayed liquidity will have priority over equally priced ILOs and OLOs. OLOs and ILOs priced inside the PBBO will have priority over inferior-priced displayed interest, but OLOs and ILOs may not be priced in sub-penny increments. Consequently, OLOs and ILOs may only be

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[17] OLOs may have a minimum size of 300 shares for securities with an Average Daily Volume of less than one million shares.

[18] As noted below, the Commission has previously found the integration of price-size-time priority into an SRO-sponsored execution venue that also offered price-time priority to be consistent with the Act. See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020, 8038 (January 26, 2001) ("SuperMontage Approval Order") (approving Nasdaq's proposal to give market participants that enter non-directed orders three options as to how their orders will interact with quotes/orders in Nasdaq: price-time; price-size-time; and price-time that accounts for ECN access fees).

priced inside the PBBO when the spread is greater than $0.01. Finally, ILOs may be designated as Type 1 or Type 2 (explained below).

Program

Third, the term "Program" would be defined as the Institutional Liquidity Program as described in Rule 107D.

Liquidity Identifier

Under proposed NYSE Rule 107D(b), the Exchange proposes to disseminate an identifier initially through an Exchange proprietary data feed, and as soon as practicable, the Exchange would disseminate the identifier through the CQS when an OLO or ILO resides in Exchange systems. The LI will reflect the symbol for the particular security, but will not include the price, side (buy or sell), or size of the OLO or ILO interest.

Institutional Liquidity Order Designations

Under proposed NYSE Rule 107D(c), a member organization can designate how an ILO would interact with available contra-side interest as follows. As proposed, a Type 1-designated ILO will interact, at each price level, first with displayed interest in Exchange systems, then available contra-side OLOs and/or ILOs in size-time priority, and then with any remaining non-displayed interest in Exchange systems, except a Type 1-designated ILO will not trade through a protected quotation. Any remaining portion of the ILO will be cancelled if designated as a Regulation NMS-compliant Immediate or Cancel Order pursuant to Rule 13, or if designated as a Reserve Order, rest on the Exchange book and be available to interact with other incoming contra-side OLOs, ILOs, and other available interest in Exchange systems but will not trade through a protected quotation. Accordingly, a Type 1-designated ILO may interact with other

interest in Exchange systems, but will not route to other markets.[19] A Type 2-designated ILO will interact, at each price level, first with displayed interest in Exchange systems, then available contra-side OLOs and/or ILOs in size-time priority, and then with any remaining non-displayed interest in Exchange systems and will route to away markets as necessary to avoid trading through a protected quotation. Any remaining portion of the ILO will be cancelled if designated as an NYSE Immediate or Cancel Order pursuant to Rule 13, or if designated as a Reserve Order, rest on the Exchange book and be available to interact with other incoming contra-side OLOs, ILOs, and other available interest in Exchange systems. Accordingly, a Type 2-designated ILO may interact with other interest in Exchange systems, and may route to away markets. A non-displayed, Type 2-designated ILO resting on the Exchange book will route to away markets as necessary to avoid trading through a protected quotation.

Priority and Order Allocation

Under proposed NYSE Rule 107D(d), the Exchange proposes that competing OLOs and ILOs will be ranked and allocated according to price, then size, then time of entry into Exchange systems. The size priority of OLOs and ILOs will be based upon their initial size at time of entry; however, any partial cancels of OLOs or ILOs will reduce their original size for priority purposes by an equal amount. As such, when an ILO or OLO is partially cancelled, its size priority will be redetermined based on its new size; however, the ILO or OLO will maintain its time priority. Displayed liquidity will have priority over equally priced ILOs and OLOs. An incoming ILO will execute first against displayed interest, then against contra-side ILOs and OLOs, and finally against any non-displayed interest in Exchange systems. Any remaining

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19 As discussed below, the Type 1 designation creates multiple and substantial possibilities for ILOs to be matched with displayed limit orders on the Exchange. In addition to enhancing the execution opportunities for Institutional Interest, therefore, the Type 1 designation directly supports the all-important incentive to display limit orders.

unexecuted ILO interest will remain available to interact with other incoming OLOs and/or ILOs if such interest is at an eligible price unless the order is designated IOC. The following examples illustrate this proposed method:

Example 1 -

PBBO for security ABC is $9.99-$10.05

OLO 1 is entered to buy ABC at $10.00 for 5,000

OLO 2 is then entered to buy ABC at $10.00 for 5,000

OLO 3 is then entered to buy ABC at $10.00 for 4,000

An incoming Type 1 ILO to sell ABC for 10,000 executes first against OLO 1's bid for 5,000, because it is the largest best-priced bid entered first in time, then against OLO 2's bid for 5,000, because it is the next largest best-priced bid. OLO 3 is not filled because the entire size of the ILO to sell 10,000 is depleted.

Assume the same facts as above. An incoming Type 1 ILO to sell ABC for 13,800 with an MTV of 10,000 will execute first against OLO 1's bid for 5,000, because it is the largest best-priced bid entered first in time, then against OLO 2's bid for 5,000, because it is the next largest best-priced bid. OLO 3 then receives an execution for 3,800 of its 4,000, at which point the entire size of the ILO to sell 13,800 is depleted. Note that the MTV requirement is met by the aggregate level of contra-side interest, even though no individual OLO satisfied the ILO's MTV requirement. Additionally, OLO 3 will still be available to interact with an incoming ILO since its original quantity was above the minimum size requirements.

Assume the same facts above, except that OLO 2's bid to buy ABC at $10.00 is for 2,000. An incoming Type 1 ILO to sell 10,000 executes first against OLO 1's bid for 5,000, because it is the largest best-priced bid, then against OLO 3's bid for 4,000, because it is the next

largest best-priced bid. OLO 2 then receives an execution for 1,000 of its 2,000, at which point the entire size of the ILO to sell 10,000 is depleted.

Additionally, assume the same facts above, except that OLO 3's bid to buy 4,000 is priced at $10.01 and there is also an additional OLO entered to buy at $10.00 for 4,000 (OLO 4). An incoming Type 1 ILO to sell 11,000 executes first against OLO 3's bid for 4,000, because it is the best-priced bid. OLO 1 then receives an execution for 5,000, because it is the largest next-best-priced bid, and was entered ahead of OLO 2. OLO 2 then receives an execution for 2,000, leaving 3,000 unexecuted shares, at which point the entire size of the ILO is depleted. Next, another incoming Type 1 ILO to sell 3,000 executes against OLO 2 for 3,000 since its original quantity was 5,000, which is greater than the size of OLO 4 at 4,000. Using this same example, assume prior to the second ILO arriving, a partial cancel was sent in for OLO 2 to reduce its quantity by 2,000. The second arriving ILO would execute against OLO 4, since by partially canceling 2,000, OLO 2 would have its original quantity decremented to 3,000, making OLO 4 larger.

Finally, assume the same facts above, except that after OLO 3 is entered, ILO 1 is entered to buy ABC at $10.00 for 10,000 with an MTV of 5,000. An incoming Type 1 ILO to sell 15,000 executes first against ILO 1 because it is the largest best-priced bid and the number of shares available exceeds ILO 1's MTV of 5,000. OLO 1 then receives an execution for 5,000, because it is the next largest best-priced bid, and was entered ahead of OLO 2, at which point the entire size of the ILO to sell 15,000 is depleted.

<u>Example 2 -</u>

PBBO for security ABC is $10.00-10.05

O1 is a limit order and the Exchange Best Bid at $10.00 for 1,000

OLO 1 is entered to buy ABC at $10.01 for 5,000

OLO 2 is then entered to buy ABC at $10.00 for 5,000

An incoming Type 1 ILO to sell ABC for 6,000 executes first against OLO 1 because it is the best-priced bid, then against O1's bid for 1,000. O1 receives priority over OLO 2 because O1 is a displayed order on the Exchange. OLO 2 remains available to interact with incoming ILOs.

Example 3 -

PBBO for security ABC is $10.00-10.05

O1 is a limit order and is the Exchange Best Bid quoted at $10.00 for 1,000

O2 is a limit order to buy and is dark at $10.00 for 4,000

O3 is a limit order to buy and is displayable at $9.99 for 2,000

OLO 1 is entered to buy ABC at $10.00 for 4,000

OLO 2 is then entered to buy ABC at $9.99 for 4,000

There is a 100 share away market Bid at $10.00

An incoming Type 2 ILO to sell ABC for 12,000 executes first against O1, the Exchange Best Bid, for 1,000 at $10.00 because it is the best-priced displayed liquidity, then against OLO 1 for 4,000 because it is the best-priced bid in the Program and liquidity in the Program has priority over nondisplayed liquidity, then against O2 for 4,000 because it is the best-priced nondisplayed liquidity. The ILO then sweeps to $9.99, first routing 100 shares to the away market bid at $10.00. At $9.99, the ILO executes first against O3 for 2,000 because it is the best-priced displayed liquidity, then against OLO 2 for 900 because it is the best-priced bid in the Program.

Implementation

The Exchange proposes that all NYSE-listed securities will be eligible for inclusion in the Institutional Liquidity Program. In order to provide for an efficient implementation, the Institutional Liquidity Program will initially cover only a certain specified list of NYSE-listed securities, as announced by the Exchange via a Trader Update. The Exchange anticipates that the securities included within the Institutional Liquidity Program will be expanded periodically based on experience with the Program.[20]

The Program Would Assist Investors in Facing the Challenge of Seeking Counterparties While Minimizing Transaction Costs

The Commission has consistently recognized the challenges faced by large investors seeking to interact with counterparties without adversely impacting the price of the stock they seek to trade.[21] The Commission has noted the difficult trade-off that size traders face in deciding how much of their trading interest to reveal—prematurely revealing trading interest can produce market impact and increased transaction costs, while concealing trading interest reduces opportunities to trade—and the "perennial challenge" that investors, brokers, and markets face in "finding effective and innovative ways to trade in large sizes with minimized transaction costs."[22]

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[20] The Exchange will announce any such expansions via a Trader Update.

[21] See Fragmentation Concept Release at 10581 ("Consequently, large investors often seek ways to interact with order flow and participate in price competition without submitting a limit order that would display the full extent of their trading interest to the market.").

[22] Equity Market Structure Concept Release at 3612 ("Market participants that need to trade in large size, such as institutional investors, always have faced a difficult trading dilemma. On the one hand, if they prematurely reveal the full extent of their large trading interest to the market, then market prices are likely to run away from them (a price rise for those seeking to buy and a price decline for those seeking to sell), which would greatly increase their transaction costs and reduce their overall investment returns. On the other hand, if an institutional investor that wants to trade in large size does nothing, then it will not trade at all. Finding effective and innovative ways to trade in large size with minimized transaction costs is a perennial challenge for institutional investors, the

Non-displayed liquidity in general, and dark pools in particular, have been viewed as useful tools to address those challenges. The Commission noted specifically in 2009, however, that dark pools differ starkly in their contribution to size discovery. While block crossing networks were producing at that time average trade sizes as large as 50,000 shares, most dark pools were executing trades with average sizes comparable to those on exchanges.[23] According to current data from Rosenblatt Securities, institutional block trading venues such as Liquidnet continue to produce large average trade sizes of almost 44,000 shares; on the other hand, dark pool average trade size generally declined from 443 shares in March 2009 to 210 shares in January 2013.[24] Additionally, a recent white paper from the SEC highlights similar facts and found that "The five ATSs with average order sizes exceeding 1,000 shares collectively comprise 2.94% of ATS dollar volume and 3.01% of ATS share volume.[25] It is essential to keep firmly in mind the apparently limited contribution most non-displayed venues provide in the discovery of size.

Moreover, it is equally important to consider the side effects of the diversion of a large percentage of investor order flow away from displayed markets.[26] The Commission has squarely

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brokers that represent their orders in the marketplace, and the trading centers that seek to execute their orders.").

23 See Dark Pool Release at 61209 ("Most dark pools, though they may handle large orders, primarily execute trades with small sizes that are more comparable to the average size of trades in the public markets, which was less than 300 shares in August 2009.").

24 ROSENBLATT SECURITIES, Trading Talk, dated March 25, 2013.

25 See Alternative Trading Systems: Description of ATS Trading in National Market System Stocks. October 2013. SEC ATS White Paper.

26 The Commission has recognized the migration of non-displayed liquidity away from the Exchange toward dark pools. See Equity Market Structure Concept Release at 3612 ("One consequence of the decline in market share of the NYSE floor in recent years is that this historically large undisplayed liquidity pool in NYSE-listed stocks appears to have largely migrated to other types of venues. As discussed [] above, a recent form of

raised the question in the Equity Market Structure Concept Release of whether the growth of non-displayed liquidity has begun to degrade the public price discovery process by widening spreads, reducing depth, and increasing short term volatility.[27] The Commission noted then that the percentage of volume between non-displayed trading centers and displayed centers had remained relatively constant between 70% and 80%.[28]

There are important indicators that this perceived static distribution of lit and dark liquidity is no longer in line with the facts, particularly when accounting for the growth in off-exchange volume. For example, the number of securities with greater than 40% TRF share has more than doubled in the past year to over 56.3% of total stocks.[29] As the chart below shows, over 70% of executions occurring in dark venues is executed at the NBBO or with less than $0.001 in price improvement or $0.10 per round lot. The Exchange believes that these and other data points raise serious questions about the value liquidity in non-displayed venues is providing to the market.

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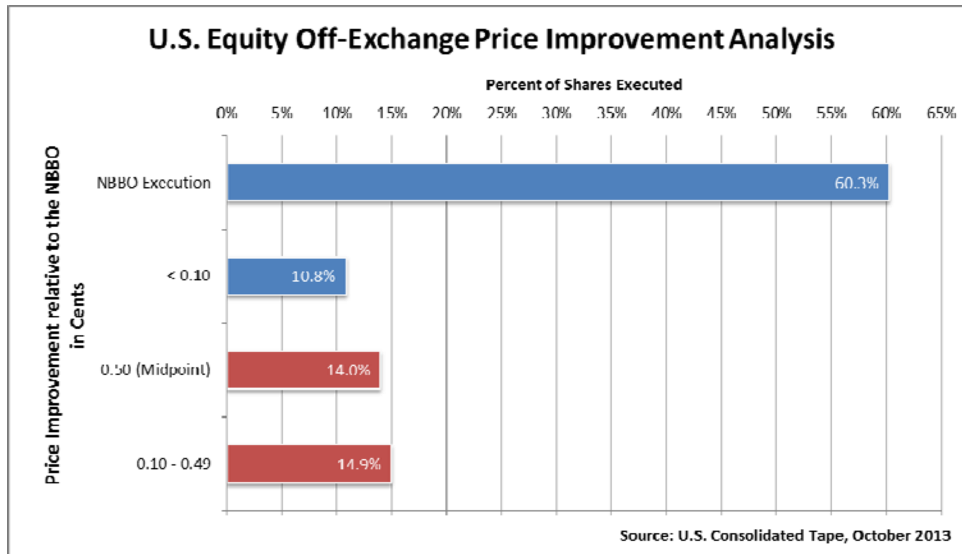
undisplayed liquidity is the dark pool – an ATS that does not display quotations in the consolidated quotation data.").

27 See Equity Market Structure Concept Release at 3613 ("Comment is requested on whether the trading volume of undisplayed liquidity has reached a sufficiently significant level that it has detracted from the quality of public price discovery and execution quality. For example, has the level of undisplayed liquidity led to increased spreads, reduced depth, or increased short-term volatility in the displayed trading centers? If so, has such harm to public price discovery led to a general worsening of execution quality for investors in undisplayed markets that execute trades with reference to prices in the displayed markets?").

28 See id. ("In this regard, it appears that the overall percentage of trading volume between undisplayed trading centers and displayed trading centers has remained fairly steady for many years between 70% and 80%."). The Commission estimated that 25.4% of share volume in NMS stocks was executed in undisplayed trading centers in September 2009. Id. at n. 85.

29 Calculation based on Consolidated Tape data as of October 2013.



The Exchange also believes that the data strongly indicate emerging threats to the public price discovery process. The Program has the potential to leverage competition to address, in a limited way, these important concerns.

Exchange Interaction between Displayed and Non-Displayed Liquidity

In considering the potential of the Program to address the possible degradation of the public price discovery process, it is worth underscoring the following basic point: the priority rules of the Exchange (and exchanges generally) offer a higher level of interaction between displayed and non-displayed liquidity than dark pools and broker internalization venues.[30] Consider, by way of illustration, an example where the PBBO was 10.01 by 10.03 with a displayed limit order one penny above the PBO at 10.04. An incoming discretionary limit order to buy with a displayed price of 10.02 and a discretionary price of 10.05 would not only interact

[30] The Commission, in the Regulation NMS Adopting Release, expressed concern regarding the display incentives of limit orders below the top of book. See NMS Adopting Release at 37527 ("The Commission believes, however, that the long-term strength of the NMS as a whole is best promoted by fostering greater depth and liquidity, and it follows from this that the Commission should examine the extent to which it can encourage the limit orders that provide this depth and liquidity to the market at the best prices.")

with the interest at the PBO but would also interact with the displayed limit order one penny above the PBO at 10.04, once again supporting the display incentive. In contrast, there is no reason to expect that a non-displayed investor order residing in a dark pool would be matched with any displayed limit order or otherwise contribute in any way to the fundamentally important incentive to display. Similarly, consider a Floor broker who finds a counterparty of a size trade two pennies below the PBBO, while there is a public limit order one penny below the PBBO in the book. Prior to the Floor broker completing the trade, the Exchange would protect the PBBO, the same way a dark pool would be required to respect the PBBO; however, the Exchange takes the additional step of protecting the displayed orders away from the PBBO but priced better than the manual trade. Therefore, in the above example, the public limit order one penny below the PBBO also would be protected by the Exchange, and the incentive to display thereby strengthened.

Unlike a dark pool or internalization venue, the Program's ILOs would bolster the display incentive. Example 3, as described above, demonstrates such support. As stated in the above example, the PBBO for the security is $10.00 by $10.05 with OLOs within the program to buy at both $10.00 and $9.99. Furthermore, there is displayed interest on the book at $10.00 and $9.99. After the incoming ILO to sell executes against all interest priced at the PBB ($10.00), the ILO then interacts with a displayed limit order priced one penny away from the PBB. Having received an execution, the market participant who placed the limit order has been rewarded and incentivized to display in the future.

<u>The Program's Use of Minimum Size Requirements Encourages the Price Discovery Mechanism by Lowering the Benefits of Certain Order Anticipation Strategies</u>

As part of the Equity Market Structure Concept Release, the Commission questioned whether the use of "pinging" orders by all or some traders to assess non-displayed liquidity

should be prohibited or restricted.[31] However, in raising the issue, the Commission noted a distinction between the use of pinging orders as the normal search for liquidity versus using pinging to detect and trade in front of large trading interest.[32] While some directional strategies contribute to the quality of price discovery in a stock,[33] order anticipation strategies which seek to trade ahead of large buyers or sellers in an attempt to capture price movement in the direction of the large trade interest do not enhance the price discovery process, detract from market quality, and harm institutional investors. The Program limits the deleterious effects that order anticipation strategies may have on the quality of price discovery by imposing minimum size requirements on OLOs and permitting ILOs to be entered with MTV restrictions, as discussed above. These size requirements are designed to shift the economics of order anticipation strategies by ensuring that users of ILOs are given a meaningful opportunity to interact with contra-side interest prior to its own interest being revealed and by increasing the costs to those using order anticipation strategies, through the use of a minimum size requirement, prior to learning about the existence of large contra-side interest.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[34] in general, and

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[31] See Equity Market Structure Concept Release at 3607. A "pinging" order is an immediate-or-cancel order that can be used to search for and access all types of non-displayed liquidity, including dark pools and non-displayed order types at exchanges and ECNs.

[32] Id. at n. 70.

[33] See id. at 3608 ("Some 'directional' strategies may be as straightforward as concluding that a stock price temporarily has moved away from its 'fundamental value' and establishing a position in anticipation that the price will return to such value. These speculative strategies often may contribute to the quality of price discovery in a stock.")

[34] 15 U.S.C. § 78f(b).

furthers the objectives of Section 6(b)(5),[35] in particular, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and make available additional liquidity to Institutional Interest.

The proposal arises out of the competition between the Exchange and non-exchange venues for block trading interest and the growth of institutional trading on less-regulated and less-transparent execution venues. As the Commission has previously noted, broker-dealers acting as over-the-counter market makers and block positioners provide liquidity directly to Institutional Interest.[36] The Program has the potential to attract additional institutional and block trading interest to the Exchange environment, and thereby improve transparency of access arrangements, priority and allocation, and fees as compared to internalizing non-exchange venues. Specifically, the ILO and OLO order types give members handling Institutional Interest tools to limit their interactions to counterparties who have committed to provide oversize liquidity, and thereby to better control information about their institutional customers' trading interest. If successful, the Program would at the same time add to the information in the consolidated quotation data by including the Oversize Liquidity Indicator in CQS. The ILO and OLO order types, the inclusion of the LI in the CQS, and the Program's priority rules rewarding size have the potential to stimulate price competition within an exchange environment for

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35 15 U.S.C. § 78f(b)(5).

36 See Dark Pool Release at 61209.

institutional-sized orders, to increase size interactions, reduce market impact, and reduce the trading costs of institutional investors.

The Exchange understands that Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The Program will simply replicate these trading dynamics that already exist in the OTC markets and will present another competitive venue for institutional and block order flow execution.

The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around block trading interest such that Institutional Interest would receive additional liquidity options than they receive in the current market. The Exchange believes that the transparency and competitiveness of an exchange-sponsored program such as the Institutional Liquidity Program would enhance the liquidity available to institutional investors and thereby reduce their trading costs. As the Commission has previously recognized, institutional investors seek to trade efficiently in large sizes without having a significant impact on market prices.[37] And the ability to interact with significant amounts of liquidity is crucial to Institutional Interest looking to effect transactions

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[37] See Dark Pool Release at 61212 ("The Commission recognizes that some trading venues, such as block crossing networks, may use actionable IOIs as part of a trading mechanism that offers significant size discovery benefits (that is, finding contra-side trading interest for large size without affecting prices). These benefits may be particularly valuable for institutional investors that need to trade efficiently in sizes much larger than those that are typically available in the public quoting markets.").

while reducing market impact and transaction costs. As such, with the knowledge that contra-side interest must satisfy minimum size requirements and the ability of ILOs to remain non-displayed within the Program, Institutional Interest would be more willing to send their orders to a public market.

Additionally, the Exchange believes that the Program will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will create additional competition for institutional and block order flow, attract institutional and block order flow to the exchange environment, and ensure that Institutional Interest benefit from a larger pool of liquidity and potentially receive better prices than they currently receive through bilateral internalization agreements. As a result, the Program is designed to provide a relative enhancement of the incentive to display than currently exists. The Exchange also notes that the LI will be disseminated through the consolidated public market data stream, and thus be widely viewable by market participants, and as such, would increase the amount of pricing information available to the marketplace. Therefore, the Program is reasonably designed to increase market transparency, thus removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that the Program will remove impediments to and perfect the mechanism of a free and open market and a national market system by incentivizing the display of public limit orders and promoting the price discovery mechanism. The increasing concentration of "toxic," or highly informed, high frequency order flow, and the corresponding diversion of more benign flow to off-exchange venues, are evident today, and have been

acknowledged with concern by the Commission.[38] The Exchange's recent competitive initiatives seek to arrest and reverse this unsettling dynamic by attracting a more diverse population of buyers and sellers to the public markets.[39] The current proposal to establish an Institutional Liquidity Program reflects a continuation of these efforts.

Further, the Exchange believes that the Program will remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting order interaction. Specifically, the functionality of ILOs in the Program provides publicly displayed liquidity in general, particularly publicly displayed limit orders below the top of book, the potential to interact with Institutional Interest, thus incentivizing the display of public limit orders in such a way that dark pools do not.

The Exchange believes that the price-size priority of OLOs and ILOs within the Program proposed herein is consistent with the Act. The priority is meant to reward liquidity providers willing to display greater size, an incentive that the Commission has previously approved.[40] Requiring that orders within the Program be executed based on price-time priority would undermine the effectiveness of the Program because it would reduce the willingness of investors to reveal large trading interest. By placing a premium on size, the Program incentivizes large

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[38] See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594, 3613 (January 21, 2010) ("Equity Market Structure Concept Release") ("It appears that a significant percentage of the orders of long-term investors are executed either in dark pools or at OTC market makers, while a large percentage of the trading volume in displayed trading centers is attributable to proprietary firms executing short-term trading strategies.").

[39] See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("By creating additional competition for retail order flow, the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders.").

[40] See SuperMontage Approval Order at 8038 ("The Commission also concludes that the NASD's algorithm based on price/size/time priority is consistent with the statute.").

investors to move away from dark pools and back towards displayed public markets.

The Exchange believes that the Program is designed to protect investors and the public interest because the Program has the potential to lower volatility in a given security by increasing liquidity and depth at, inside, and outside the PBBO. The Commission has previously acknowledged the relationship between transaction costs, short-term price volatility, and temporary imbalances in trading interest.[41] Additionally, investors are more likely than professional traders to be on the wrong side of short-term price swings.[42] The increased liquidity made available through the Program will decrease the temporary imbalances in trading interest due to a large incoming order, reducing short-term price volatility and investor trading costs.

Further, the Exchange believes the Program is designed to protect investors and the public interest because the Program has the potential to increase price improvement and size improvement opportunities for institutional investors. Because of the priority provided to equally-priced displayed interest outside the Program, member organizations must submit OLOs and ILOs priced within the PBBO in order to receive priority or else risk receiving a partial or no fill. Additionally, the size priority applied to OLOs or ILOs similarly incentivizes member organizations to submit large orders into the Program, offering size improvement opportunities to institutional investors.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which will occur no later than 90 days after Commission approval of Rule 107D. The Program will expire on [Date will be determined

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41 See Dark Pool Release at 61209, n. 4 ("Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit cost for large investors (who often represent the consolidated investments of many individuals) is the price impact that their large trades can have on the market.")

42 See id.

upon adoption of Rule 107D]. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein. During the pilot period, the Exchange will submit certain data, periodically as required by the Commission, including: summary statistics on the operation of the Program along with the meaning of the summary statistics; raw data relating to the operation of the Program; reports and data monitoring the Program's participants along with their activity; and the Exchange's assessment of the impact of the Program.

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. The Exchange believes that the proposed rule change will increase competition among execution venues and encourage additional liquidity. The Exchange notes that a significant percentage of the orders of institutional investors are executed over-the-counter. The Exchange believes that it is appropriate to create a financial incentive to bring more institutional order flow to a public market.

Additionally, as previously stated, the differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around block trading such that Institutional Interest would receive better prices and greater access to liquidity than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Institutional Liquidity Program on an exchange market would result in better prices for Institutional Interest while reducing their market impact.

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 within such longer period 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-2013-72 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-2013-72. 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 will also 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 publicly available. All submissions should refer

to File Number SR- NYSE-2013-72 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.[43]

Kevin M. O'Neill
Deputy Secretary

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[43] 17 CFR 200.30-3(a)(12).