market to trading to the Exchange. Also, any migration to the Exchange from the OTC market will result in increased market transparency.

Additionally, the Exchange believes that the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of LEAPS. Further, the proposal will result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such 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 email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–071 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–CBOE–2012–071. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of the 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–CBOE–2012–071 and should be submitted on or before August 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19612 Filed 8–9–12; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67603; File No. SR–NYSE–2012–35]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reducing From 10 Days to Five Days the Shareholder Notification Period That Is a Condition to a Waiver of the NYSE's Shareholder Approval Requirements Pursuant to Section 312.05 of the Exchange's Listed Company Manual

August 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2012, the 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 to reduce from 10 days to five days the shareholder notification period that is a condition to a waiver of the NYSE's shareholder approval requirements pursuant to Section 312.05 of the Exchange's Listed Company Manual (the "Manual"). The Exchange also proposes to permit the shareholder notification to be effectuated by a broadly disseminated press release in addition to a letter to shareholders, and the date of such press release shall serve as the commencement date of the shareholder notification period, subject to a minimum notification period of at least two days from the date of mailing of the shareholder letter. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included

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

[2] 17 CFR 240.19b–4.

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

In connection with an emergency capital raising transaction by Knight Capital Group, Inc. (''KCG''), the Exchange proposes to reduce from 10 days to five days the shareholder notification period that is a condition to a waiver of the NYSE's shareholder approval requirements pursuant to Section 312.05 of the Manual. The Exchange also proposes to permit the shareholder notification to be effectuated by a broadly disseminated press release in addition to a letter to shareholders, and the date of such press release shall serve as the commencement date of the shareholder notification period, subject to a minimum notification period of at least two days from the date of mailing of the shareholder letter. The Exchange does not intend to amend the text of Section 312.05.

Section 312.03(c) of the Manual requires a listed company to obtain shareholder approval prior to the issuance of shares of common stock representing 20% or more of the voting power or number of shares outstanding of the company's then outstanding common stock or the issuance of securities convertible into, exchangeable for or exercisable for 20% or more of the voting power or number of shares outstanding of the company's then outstanding shares of common stock.[3]

Subject to approval by the Exchange of an application made by the company, Section 312.05 provides an exception to the shareholder approval requirements of Section 312.03 when (1) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on that exception is expressly approved by the audit committee of the listed company's board of directors (the ''financial distress exception''). A company relying on this exception must mail to all shareholders not later than 10 days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required under the policy of the Exchange and indicating that the audit committee of the board has expressly approved the exception.

KCG has made an application to the Exchange for a waiver of the Exchange's shareholder approval requirements pursuant to Section 312.05 in relation to a proposed emergency capital raise. KCG has obtained the approval of its audit committee as required by Section 312.05. After extensive discussion with KCG, the Exchange has concluded that KCG's use of the financial viability exception is warranted and has approved KCG's application. However, KCG has informed the Exchange that it does not believe that it will be able to obtain the necessary funding on an immediate basis unless the investors are able to convert the securities they purchase into common stock more quickly than would be possible if the Exchange required the full 10 days notice to shareholders provided for in Section 312.05 of the Manual.

KCG has informed the Exchange that there is grave doubt as to its ability to continue its operations in the immediate future if it is unable to obtain significant funding immediately. Given the company's belief that it will be unable to raise this capital if it is unable to issue common stock to its potential investors until the end of the full 10-day notification period required under Section 312.05 of the Manual, KCG has informed the Exchange that it will likely be unable to continue its operations with immediate effect unless the Exchange shortens that notification period.

Accordingly, the Exchange proposes to reduce from 10 to five days the shareholder notification requirement of Section 312.05 in relation to KCG's financial distress application. In addition, the Exchange proposes to permit the shareholder notification to be effectuated through KCG's issuance of a broadly disseminated press release, in addition to a shareholder letter, disclosing the information required by Section 312.05 of the Manual as well as that it obtained additional exemptive relief to reduce the shareholder notification requirement from 10 to five days, and the date of such press release shall serve as the commencement date of the shareholder notification period, subject to a minimum notification period of at least two days from the date of mailing of the shareholder letter. The press release must also disclose the earliest date at which the convertible securities will be converted or become convertible into common stock.[4]

The Exchange believes that this relief is appropriate in light of the uniqueness of the circumstances giving rise to KCG's urgent need for capital. In particular, KCG operates a broker-dealer with significant operations and there could be some disruption to KCG's customers should KCG's operations cease abruptly. Moreover, KCG has advised that if the notice period is not shortened it will not be able to raise the capital needed to continue operations in the immediate future. With respect to the use of a press release in addition to a shareholder letter, the Exchange believes that the extremely high volume of trading in KCG' stock during the last few days has likely resulted in significant changes to its shareholder base and that a press release is therefore an effective means of communication with such shareholders. In addition, the Exchange believes that the reduction in the notification period is in the best interests of KCG's existing shareholders, since KCG will otherwise likely be unable to raise necessary capital to avoid insolvency, and likely significant erosion or elimination of shareholder value, absent such reduction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 amendment is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that KCG will likely become insolvent if the Exchange does not reduce the required notification period and the existing shareholders of KCG therefore have a compelling

[3] There are exceptions to the shareholder approval requirements of Section 312.03(c) for public offerings for cash and for a transaction that qualifies as a ''Bona Fide Private Financing'' as defined in Section 312.04(g).

[4] KCG has advised that it will also send a letter to shareholders contemporaneously with or shortly after issuance of the press release, but in any event at least two days prior to conversion by the investors of the securities they purchase into common stock.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

interest in the company's ability to raise capital as quickly as possible. The Exchange also believes that use of a broadly disseminated press release is an effective means of communication with KCG's shareholders, in view of the extremely high trading volume in its stock during the last few days. The Exchange also notes that shareholders would still have a reasonable period of at least five days notice of the issuance, including at least a two day notice period after mailing of the shareholder letter. The Exchange also believes that the proposed waiver would facilitate transactions in securities, as there could be disruption to KCG's customers if KCG ceased operations abruptly.

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) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the Exchange states that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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 [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) [11] and Rule 19b–4(f)(6) [12] thereunder, and also become operative on that same date. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Exchange has represented, among other things, that (i) the waiver would allow KCG to obtain on an immediate basis the capital it needs to enable it to continue operations and avoid insolvency; (ii) KCG's existing shareholders, whom this notification is designed to inform, have a compelling interest in KCG's ability to raise capital as quickly as possible; and (iii) under these circumstances, by issuing a broadly disseminated press release, in addition to mailing a shareholder letter, KCG will provide effective notice of the issuance to its shareholders and its shareholders will still have a reasonable notice period of the issuance of at least five days. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the 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.

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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–35 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–2012–35. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of the 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–2012–35 and should be submitted on or before August 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19614 Filed 8–9–12; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). The Exchange has requested that the Commission waive the requirement that the Exchange provide the Commission written notice of its 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 on which the Exchange filed the proposed rule change pursuant to Rule 19b–4(f)(6)(iii). The Commission hereby grants this request.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] In connection with this release, the Commission is not making any findings as to the accuracy of the representations made by the Exchange or expressing any view regarding the merits of any transaction, or its terms, entered into by KCG.

[15] 17 CFR 200.30–3(a)(12).