

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 10:00 a.m. and 3:00 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-EDGX-2012-39 and should be submitted on or before October 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-22643 Filed 9-13-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67812; File No. SR-NYSE-2012-29]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending NYSE Rule 76 To Add Supplementary Material Relating to a Cross Function That Provides a Regulation NMS Rule 611—Compliant Tool for Floor Brokers

September 10, 2012.

#### I. Introduction

On July 13, 2012, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending NYSE Rule 76 to add

supplementary material to provide Floor Brokers with a new functionality through which to effect manual cross transactions of block size. The proposed rule change was published for comment in the **Federal Register** on July 27, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

Currently, the Floor Broker and Designated Market Maker ("DMM"), after announcing a proposed cross transaction to the trading crowd,<sup>4</sup> must manually monitor the protected best bid or offer to ensure that the proposed cross can be executed in accordance with the customer's instructions and in compliance with Rule 611 of Regulation NMS ("Rule 611").<sup>5</sup> The Exchange contends that, in today's fast-moving electronic markets, this manual monitoring process may not be the optimal manner by which to facilitate and evidence compliance with Rule 611.

Accordingly, the Exchange proposes to add a new Supplementary Material to NYSE Rule 76.<sup>6</sup> The proposed Supplementary Material would allow Floor Brokers to enter a cross transaction into their hand held device ("HHD"); the Exchange would provide a quote minder function that would monitor protected bids and offers to

<sup>3</sup> See Securities Exchange Act Release No. 67488 (July 23, 2012), 77 FR 44302 ("Notice").

<sup>4</sup> According to the Exchange, a DMM, on behalf of a Floor Broker, will enter a cross transaction into the Exchange's Display Book system as a completed transaction in situations where no one in the trading crowd otherwise breaks up a proposed cross. The completed transaction is printed to the consolidated tape ("Tape") at that price.

<sup>5</sup> 17 CFR 242.611. Commission staff has issued guidance pertaining to the manual execution of orders under staff FAQ 3.23 of Rule 611 ("FAQ 3.23").

<sup>6</sup> NYSE Rule 76 governs the execution of "cross" or "crossing" orders by Floor Brokers. NYSE Rule 76 applies only to manual transactions executed at the point of sale on the trading floor and provides that when a member has an order to buy and an order to sell the same security that can be crossed at the same price, the member is required to announce to the trading crowd the proposed cross by offering the security at a price that is higher than his or her bid by a minimum variation permitted in the security before crossing the orders. Any other member, including the Designated Market Maker ("DMM"), can break up the announced bid and offer by trading with either side of the proposed cross transaction. According to the Exchange, an agency "cross" of 10,000 shares or more at or between the Exchange best bid or offer has priority and can only be broken up to provide price improvement that is better than the cross price as to all or part of such bid or offer. A buy and sell order to be crossed pursuant to NYSE Rule 72(d) is subject to Rule 76, including the requirement that such a proposed cross be announced to the crowd. See Notice, supra note 3 at 44302; see also, NYSE Rule 72(d).

determine when the limit price assigned to the proposed crossed transaction is such that the orders may be executed consistent with Regulation NMS Rule 611.

When the trade can be effected at or between the protected bid and offer, the Exchange-provided quote minder will: (i) Deliver an alert message to the Floor Broker's HHD indicating that the orders may be crossed; (ii) capture a time-stamped quote within Exchange systems that includes the time that the alert was sent to the HHD and the protected bid and offer at that time; (iii) commence a 20-second timer from the moment a cross trade may be executed at or between the protected and bid offer; and (iv) enable a print key function in the HHD permitting the Floor Broker to cross the orders and print the trade through Exchange systems to the Tape within that 20-second time period.

When the Floor Broker receives the alert message mentioned above, the Floor Broker must first announce the proposed cross transaction to the trading crowd; if the crowd or the DMM does not break up the proposed cross trade, the Floor Broker may then execute the trade using the print key function of the HHD before the expiration of the 20-second time period.

The proposed Supplementary Material would require the proposed cross transaction to consist of at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more. Further, the proposed cross transaction may not be for the account of the member or member organization, an account of an associated person, or an account with respect to which the member, member organization or associated person exercises investment discretion. The Exchange has represented that this restriction would help ensure that the functionality would not be used for affiliated principal order flow.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating,

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>2</sup> 17 CFR 240.19b-4.

clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds that the proposed Supplementary Material to NYSE Rule 76 removes impediments to and perfects the mechanism of a free and open market because the proposed cross functionality is reasonably designed to assist Floor Brokers' ability to cross orders on the Exchange, particularly if there is significant quote traffic with flickering prices, while facilitating compliance with the trade-through restrictions of Rule 611. Given the rapid quotation changes in today's electronic markets, the Commission believes that it is reasonable to allow Floor Brokers a 20-second look-back period in which to manually execute the cross transaction without violating the trade-through rule. The Commission also notes that the proposal does not otherwise change the operation of Rule 76. For example, the Floor Broker is still required to expose the proposed cross transaction to the trading crowd, and the proposed cross transaction may be broken up by members by trading with either side of the proposed transaction during the 20-second time period.

The Commission further notes that the proposal would bring more automation to the Exchange, which could support more efficient executions of the cross transactions. Moreover, because the transaction terms will be captured in an automated system, the proposed cross functionality is reasonably designed to provide a better audit trail for manually crossed orders, which may facilitate review of Floor Broker transactions for purposes of compliance with Rule 611.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-2012-29) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-22637 Filed 9-13-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67814; File No. SR-NYSE-2012-41]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the New York Stock Exchange LLC Price List To Make Changes to Certain Transaction Fees To Eliminate the Step-Up Rate for Non-Floor Broker Transactions

September 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 31, 2012, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III 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 make changes to certain transaction fees within its Price List to eliminate the step-up rate for non-Floor broker transactions. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 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 proposes to make changes to certain transaction fees within its Price List to eliminate the step-up rate for non-Floor broker transactions. The Exchange proposes to make the rule change operative on September 1, 2012.

Member organizations are currently charged \$0.0023 per share for all non-Floor broker transactions (i.e., when taking liquidity from the NYSE) that are not otherwise specified in the Price List. In addition, non-Floor broker member organizations that add specified amounts of liquidity to the NYSE above their normal amount ("step-up") are charged a lower rate of \$0.0022 per share per transaction. The lower rate applies to non-Floor broker member organizations if the member organization's ADV adds liquidity to the NYSE during the billing month ("Adding ADV")<sup>3</sup> that is at least the greater of (i) the member organization's January 2012 Adding ADV ("Baseline ADV") plus 0.075% of consolidated average daily volume in NYSE-listed securities during the billing month ("NYSE CADV") or (ii) the member organization's Baseline ADV plus 20%. Additionally, if a member organization's ratio of Baseline ADV-to-total ADV during January 2012 is less than 10%, this rate only applies to the member organization's shares that are executed in an amount up to and including 0.75% of NYSE CADV. The rate of \$0.0023 per-share applies to the member organization's remaining shares that are executed, unless the member organization's Adding ADV is greater than its Baseline ADV by at least 0.25% of NYSE CADV.

The Exchange proposes to eliminate this step-up rate so that member organizations are charged \$0.0023 per share for all non-Floor broker transactions that are not otherwise specified in the Price List, regardless of the level of adding liquidity.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)

<sup>3</sup> With respect to this lower rate, calculations of Adding ADV exclude early closing days as well as any liquidity added by a Designated Market Maker.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.