GTS
Building Better Markets

Via Email

March 16, 2022

J. Matthew DeLesDernier
Assistant Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: SEC Release No. 34-93809 (Proposed Rule Change to Amend NYSE Rules 7.31, 7.35, 7.35B, 7.35C, 98, and 104 Relating to the Closing Auction)
File No. SR-NYSE-2021-44

Dear Mr. DeLesDernier:

GTS Securities, LLC ("GTS") appreciates the opportunity to address the Proposed Rule change to amend New York Stock Exchange ("NYSE") Rules 7.31, 7.35, 7.35B, 7.35C, 98, and 104 relating to the NYSE's closing auction (the "Proposal").[1] As a Designated Market Maker ("DMM") on the NYSE, GTS has serious concerns with the Proposal and believes it should be disapproved. Despite these concerns, we provide a series of suggested changes below that can help reduce the harmful impacts of the Proposal while still achieving many of NYSE's stated goals.

Overview

The Proposal puts forth a series of rule changes that would fundamentally alter the role of the DMM. Among the most significant are the following:

- restrict DMMs' current ability to participate in the closing auction;
- significantly narrow the closing auction price parameters;
- give DMMs a restricted Closing D Order (the "DMM Closing D Order") that must be entered by 3:59:50 pm; and
- severely limit DMMs' flexibility to enter interest after the end of Core Trading Hours, including same-side participation.

NYSE justifies these drastic changes by claiming that they will: (1) incentivize new DMMs to enter the market; (2) make the closing more "transparent and deterministic;" and (3) "make it easier for regulatory staff to monitor DMM trading activity on the exchange." As discussed in more detail below, we believe that the changes would neither accomplish the stated goals nor are justified based on their unintended consequences. Instead, the proposed changes will, in fact,

[1] Securities and Exchange Commission Release No. 34-93809 (December 17, 2021), 86 FR 73060 (Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposal) ("Release 34-93809"); Securities and Exchange Commission Release No. 34-93037 (September 16, 2021), 86 FR 52719 (Notice of Filing of the Proposal) ("Release 34-93037).

introduce additional volatility and increase DMM risk, with the result that the Proposal would make NYSE's market less "transparent and deterministic" and disincentivize new DMM entrants.

Even more problematic, these changes would severely impede fulfillment of the DMMs' statutory obligation to maintain a fair and orderly market. Among other things, these changes will disincentivize DMMs from using their judgment and committing capital to facilitate trading at the close, which will decrease liquidity and increase volatility. NYSE has not explained how this increase in volatility promotes its statutory obligations under Section 6(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Further, NYSE acknowledges the detrimental impact of the Proposal on DMMs:

> "*The Exchange believes that in the aggregate, these changes . . . result in a shift that decreases the benefits available to DMMS* ***without a commensurate decrease in obligations***."[2]

The SEC has previously criticized NYSE for failing to maintain the balance between DMM obligations and benefits—especially where, as here, NYSE fails to explain how its changes promote its Section 6(b) obligations.[3] The SEC should do so again here and reject the Proposal altogether. If, however, the SEC does determine to move forward (which we urge the SEC against), we submit that NYSE should (1) permit entry of DMM Closing D Orders through the end of the NYSE continuous trading day, (2) limit DMM Closing D Orders to only a DMM's names, and (3) eliminate off-exchange closing auctions.

The Proposal Would Not Accomplish Its Stated Goals

The Proposal would not accomplish its stated goals of incentivizing new DMMs to enter the market and making the closing more "transparent and deterministic." And its third stated goal—of "*mak[ing] it easier for regulatory staff to monitor DMM trading activity on the exchange*"—is unpersuasive. As a result, the Proposal is designed in a manner which is inconsistent with the standard applied by the SEC when considering an exchange's proposed rule changes.

a. The Proposal Would Not Incentivize New DMM Entrants

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[2] *See* Release 34-93809, 86 FR at 73065; Release 34-93037, 86 FR at 52725 (emphasis added). NYSE suggests that this imbalance justifies removal of the Rule 104 prohibitions. *See* Release 34-93037, 86 FR at 52725. But the removal of those prohibitions would hardly set the scales right. In fact, the Rule 104 prohibitions are immaterial if the other changes in the Proposal are adopted. *See id.* at 52730 (explaining why the Prohibited transactions are no longer necessary: "Prohibited Transactions make sense when a DMM has discretion over the Closing Auction Price and when a DMM can enter and cancel interest after the end of Core Trading Hours. However, with the proposed changes described in this filing, DMM discretion is explicitly limited; the Closing Auction Price must be within a defined and transparent parameter that cannot be changed after the end of Core Trading Hours and DMMs would be limited in what offsetting interest they can enter after the end of Core Trading Hours.").

[3] *See* Securities and Exchange Commission Release No. 34-81150 (July 20, 2017), 82 FR 33534, 33535-37 (Order Disapproving Proposed Rule Changes Amending Exchange Rule 104) ("Rule 104 Order") (disapproving of proposed NYSE rule impacting DMM benefits).

The Proposal would not incentivize new entrants to undertake the costs to register as a DMM unit, because the Proposal drastically increases DMM risk. By eliminating same side participation and significantly reducing the closing auction price parameters, the Proposal substantially limits DMMs' ability to participate in the closing auction. NYSE's purported solution—the DMM Closing D Order—is no solution at all, because DMM Closing D Orders entered after 3:59:50 would be rejected.[4]

The final ten seconds of trading—where the DMM would be unable to utilize the Closing D Order—are critical to a DMM's ability to manage its risk. Firms do not send all their closing volume into the auction. Rather, they trade in the continuous market and then send the balance to the close. The data bears this out: there is tremendous trading volume during the final 10 seconds of the trading day, and it is one of the busiest and most impactful periods of the trading day. The importance of trading near the close was highlighted in a Wall Street Journal article noting that:

> From the start of this year through Friday, about 23% of trading volume in the 3,000 largest stocks by market value has taken place after 3:30 p.m., according to data from Pragma LLC. That's compared with about 4% from 12:30 p.m. to 1 p.m.
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> Closing auctions have grown in volume over the past decade, in part because of the rising popularity of index funds, whose managers passively track indexes like the S&P 500, rather than actively seeking to pick stocks. These types of investments often use closing prices as a benchmark, leading their managers to execute trades at the end of the session. . . .
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> Some analysts say the compressed end-of-day activity comes at the expense of trading at other times. In periods of market stress, it often gets tougher to buy and sell stocks, a sign of waning liquidity in the market. Others say being on the wrong side of the move toward the end of the day can be costly, given how violent the swings can be.
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> "Everyone is trading into the close because their portfolios are benchmarked to the close," said Spencer Mindlin, a capital markets analyst at Aite Group. "The more trading that's going at the close and the more [it] gravitates, it's draining it out of the liquidity pool that's there during the day."[5]

By severely limiting DMM participation at the close, the Proposal does more than just limit the tools at DMMs' disposal. It would leave DMMs exposed to the market risk of positions

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[4] If anything, the Proposal would only serve to incentivize DMMs with no real market risk to enter the market, just so they could have access to a floor wide Closing D Order that can be entered electronically without the need for a floor broker, and thereby eliminate the operational risk that all other market participants have, as well as giving them a significant time advantage over other market participants.

[5] Gunjan Banerji, "The Thirty Minutes that Can Make or Break the Trading Day," The Wall Street Journal (March 11, 2020), available at: https://www.wsj.com/articles/the-30-minutes-that-can-make-or-break-the-trading-day-11583886131.

acquired in the last ten seconds either by market-making or by NYSE Guideline Requirements.[6] As a consequence, DMMs would be forced to participate less aggressively leading into the end of the trading day as a matter of prudent risk management. This scenario will play itself out most acutely when markets are volatile and liquidity from DMMs is most needed. In this situation, volatility will dramatically increase the risk posed to DMMs during the final 10 seconds of the trading day and DMMs will be unable to manage their risk during that period in a manner sufficient for them to engage in aggressive liquidity provision. This result would be detrimental to both investors and the markets as a whole.

b. Not Only Will the Proposal Make the Close Less "Transparent and Deterministic" but it Will Increase Volatility

NYSE also asserts that the Proposal would make the close more "transparent and deterministic" by constraining the parameters for setting the Closing Auction Price by a DMM. However, we believe that the proposed restraints are not only unnecessary but would in fact make the closing less deterministic and transparent.

First, NYSE concedes that the Closing Auction Price already falls within its proposed parameters 96.5% of the time.[7]

Second, NYSE has not provided any analysis of the circumstances or the DMM's role in facilitating closings on volatile days where the Closing Auction Price was more likely to fall outside the parameters.[8] For example, the Exchange should provide a detailed analysis of the market on days like January 24, 2022, when "liquidity spiked" and NYSE touted the benefits of the DMM model by noting that "*NYSE-listed companies had tighter quoted spreads compared to Nasdaq-listed companies and achieved 2 times better accuracy on the opening auction and 3 times better accuracy on the closing auction*."[9]

Further, NYSE "*reviewed market quality and DMM statistics from the start of 2021 through mid-February 2022*" and reported that:

1. "Nearly 30% of the liquidity providing volume that DMMs execute improves the national best price;"[10] and

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[6] The DMM Closing D Order poses additional problems: If a DMM has a DMM D-Quote and the imbalance flips from buy to sell, then the DMM then has to have the ability to join other side. That, however, would mean that the DMM is trading on both sides of the market at close, which would in turn undercut the NYSE's views on self-trading in the closing auction.
[7] Release 34-93037, 86 FR at 52720 (referring to closing auctions between January 1, 2021 and July 23, 2021).
[8] The NYSE does not provide any analysis of the DMMs' role in the 3.5% of the instances when the Closing Auction Price fell outside its proposed parameters.
[9] Steven Poser, "When Volatility Calls, NYSE DMMs Answer," NYSE Data Insights (February 18, 2022), https://www.nyse.com/data-insights/when-volatility-calls-nyse-dmms-answer ("February 18, 2022 Data Insights").
[10] February 18, 2022, Data Insights.

2. "NYSE DMMs increased their participation rate by a ratio of 7.3% on volatile days. This compares to a 11.0% drop by other market makers that do not have the DMM's obligations."[11]

In other words, NYSE acknowledges that DMM participation was crucial on volatile trading days. As NYSE explains:

> The largest single trades each day are the Opening and Closing Auctions. The DMM is obligated to conduct the auction and, if needed, can [use its discretion to] participate in the auction to help produce a price that more accurately reflects market conditions.[12] On January 24th, DMMs participated in Opening and Closing Auctions at nearly twice their usual rate. This contributed to NYSE Auctions achieving prices closer to market trading prices in times near the auctions. . . .
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> In volatile markets, many market makers usually widen their bid-ask spreads to demand more compensation for the elevated risk they are assuming, and some may exit trading entirely. NYSE DMMs, on the other hand, must still meet their obligations to quote and to maintain a fair and orderly market. This resulted in DMMs providing a significantly higher share of total NYSE displayed trading volume on January 24th.[13]

And:

> There have been many episodes of extreme volatility in recent history, and with political and economic uncertainty across the world we can likely expect more volatile days in the future. The NYSE DMM is the only market participant obligated to meaningfully provide liquidity and contribute to price discovery in any market condition. This unique obligation produces higher market quality at the open, the close, and throughout the day for NYSE-listed companies.[14]

It is incongruous for NYSE to extoll the crucial role that DMMs play in volatile markets yet propose to severely hamper their ability to provide liquidity in closing auctions on volatile days.

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[11] February 18, 2022, Data Insights. NYSE measures participation rate as "the total volume executed by the DMM or market maker from displayed liquidity providing orders divided by total liquidity providing volume executed on the NYSE." *Id.* at n.3.

[12] NYSE Rule 104(a)(3) (DMM responsibilities include: "Facilitat[ing] the close of trading for each of the securities in which the DMM is registered as required by Exchange rules. This may include supplying liquidity as needed."); NYSE Rule 7.35B(g) ("The DMM is responsible for determining the Auction Price for a Closing Auction under this Rule.").

[13] Kevin Tyrrell, "NYSE DMMs: Meeting the Volatility Challenge," NYSE Data Insights (January 25, 2022), https://www.nyse.com/data-insights/nyse-dmms-meeting-the-volatility-challenge. NYSE acknowledges that DMMs also provided needed liquidity on February 11, 2022. February 18, 2022, Data Insights.

[14] February 18, 2022, Data Insights. Notwithstanding the benefits accruing to NYSE listed companies from the participation of DMMs, it does not appear that NYSE has considered the impact that the Proposal may have on its listed companies.

We believe the SEC will not have sufficient information to approve the Proposal unless and until NYSE provides a thorough analysis of DMM activity on volatile days and how the constraints on DMM activity in the Proposal would affect NYSE market quality and investor protection.

Third, the Proposal would ultimately make the imbalance publications *less* deterministic of the closing price. By limiting DMMs' ability to trade in the last ten seconds of the trading day, the Proposal will make DMMs more reluctant to provide liquidity up to and after 3:59:50 pm and through the close, and more reluctant to place orders to reduce MOC imbalances. The result is that the closing auction would be more susceptible to price swings as an ameliorating force is reduced.[15] This will particularly be the case in instances of large MOC imbalances or large swings in MOC imbalances before the close.

In short, NYSE's rationale appears to be a solution in search of a non-existent problem, all while extolling the virtues of this supposedly problematic framework. At the same time, the Proposal has the potential to create significant problems for DMMs in fulfilling their obligation to provide fair and orderly markets on NYSE in ways that could have serious negative impacts on the market as a whole.

c. The Proposal's Third Goal is Unpersuasive

Finally, NYSE claims that the changes would "make it easier for regulatory staff to monitor DMM trading activity on the exchange."[16] This claim is not a sufficient justification for the Proposal. Not only does NYSE already collect extensive data on trading activity, but it is also unclear how "mak[ing] it easier for regulatory staff" furthers any of its statutory obligations at issue here. The Exchange has also not shown how "making it easier" for its staff would outweigh the negative impact of the restrictions on DMMs in maintaining fair and orderly markets—which directly impacts investors and the marketplace. Moreover, NYSE is already able to collect extensive data on DMM activity and limiting DMM activity will not enhance the NYSE's data collection in any meaningful manner. Indeed, NYSE has not shown that it is impeded in any manner in monitoring DMM activity currently, and it is GTS's experience that NYSE has not been reluctant to launch inquiries using current data.[17]

NYSE Has Not Demonstrated that the Proposal Furthers Its Statutory Requirements or DMMs' Statutory Requirements

[15] The swing in the last 10 seconds will be particularly drastic, because the close may be more predictable up until the last 10 seconds (due to the restrictions imposed under the Proposal), but then more uncertain and more volatile in the last 10 seconds. In other words, the Proposal would create a larger gap in market conditions between the two periods, at the worst possible time heading into the close.
[16] Release 34-93037, 86 FR at 52722.
[17] Moreover, it is altogether unclear from the Proposal why NYSE needs to alter the closing auction so that its regulatory arm can more easily monitor DMM activity.

As NYSE acknowledges in the Proposal, it is bound by statutory obligations under Section 6(b) of the Exchange Act. Section 6(b) establishes that "[a]n exchange shall not be registered as a national securities exchange unless the Commission determines that" among other things,

> The rules of the exchange are 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 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange.[18]

NYSE provides a lengthy explanation of how the Proposal is "designed" to promote these objectives.[19] However, this explanation falls short of providing a sufficient justification for the Proposal. In fact, the justification provided consists mainly of re-explaining the Proposed changes and is unpersuasive and devoid of meaningful analysis.[20] This outcome is consistent with the fact that the Proposal does not, in fact, promote the Section 6(b) objectives. On balance, the changes in the Proposal will not "promote just and equitable principles of trade," or any of the other goals listed in Section 6(b). Instead, they will introduce needless volatility and expose DMMs to unnecessary risk.[21]

In addition, DMMs have Exchange Act and NYSE Rule 104 obligations to maintain a fair and orderly market in their assigned securities. Here too, NYSE has not explained how the Proposal would promote DMMs' ability to "maintain fair and orderly markets." To be clear, it will not. By limiting the entry time of the DMM Closing D Order, the Proposal provides a disincentive for aggressive quoting by DMMs to respond to market developments in the last 10 seconds. Moreover, the Proposal (which would only allow a DMM to offset a closing imbalance and then only up/down to the last reference price (usually the last NYSE sale prior to 4:00 pm)), would not allow the DMM to manage any last second changes to its position if that liquidity is on the same side as the imbalance. In short, the Proposal would expose DMMs to substantial increased risk.

The Proposal also severely restricts the tools available to DMMs after the close. DMMs use a variety of data inputs to fulfill their obligation to prepare for the opening of the market the

[18] 15 U.S.C. § 78f(b)(5).
[19] *See* Release 34-93037, 86 FR at 52727-52730.
[20] *See* Release 34-93037, 86 FR at 52727-52730; *see also* Rule 104 Order, 82 Fed. Reg. at 33537 ("[T]he Commission believes that NYSE and NYSE MKT have merely asserted that, but not explained how, existing surveillances can act as an adequate substitute for this bright-line rule.").
[21] As noted above, the Proposal—which severely restricts the tools available to DMMs—is strikingly inconsistent with NYSE's public statements about DMMs. *See, e.g.*, February 18, 2022, Data Insights (explaining and touting the key role DMMs play in controlling market volatility).

following day.[22] These include information around volatility (e.g., industry, sector, and correlated instruments), markets and trading (e.g., futures, derivatives, currencies, commodities, bonds, ETFs, foreign, CDS spreads, etc.), and news on geopolitical and issuer-specific events (e.g., earnings and anticipated earnings reports; instrument or correlated instrument; and economic data). This information helps DMMs prepare for the opening of the following trading day by accounting for anticipated market flows and the trading that is needed to prepare for those flows. For example, if a geopolitical event were to occur at any time prior to the DMM closing the security that indicates to the DMM that there will be substantial buy-side pressure at the following day's open, the DMM would start purchasing securities to fulfill its critical role in the market. By acquiring securities on the closing auction, as explicitly provided for in applicable regulations, the DMM can account for the anticipated spike in demand when the market opens the following day and smooth out volatility. In other words, the current closing auction tools provided in Rule 7.35B(a)(2)[23] are critical for DMMs to continue meeting their obligations under NYSE Rule 104(a)(2) to facilitate the next-day opening and provide liquidity as needed.

The basic example above highlights the settled industry understanding of the DMM role, the discretion that DMMs have and use to adjust to real world events, and the high-touch DMM functionality that NYSE frequently promotes. However, the Proposal would severely restrict the DMMs' ability to fulfill their primary market maker function and undercut the financial industry's current expectations for the DMM role because the closing auction tools available under the Proposal (which would only allow a DMM to offset a closing imbalance and then only up/down to the last reference (usually the last NYSE sale prior to 4:00 pm)) are woefully inadequate to facilitate a smooth opening on the next trading day and fulfill the DMM's affirmative regulatory obligations.

Alternative Approaches: The SEC Should Reject the Proposal. If the SEC determines otherwise, it should only approve the Proposal if NYSE: (1) Permits Entry of DMM Closing D Orders Through the End of the NYSE Continuous Trading Day; (2) Limits Use of DMM Closing D Orders to Only a DMM's Names; and (3) Prohibits Off-Exchange Closing Auctions

For all the reasons noted above, GTS respectfully submits that the Proposal is seriously flawed and inconsistent with the Exchange Act and, as such, should be disapproved—full stop.

However, should the SEC feel compelled to affirmatively act (which we urge against), then at a minimum NYSE should amend the Proposal in the following manner. First, entry of DMM

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[22] Indeed, NYSE's current rules recognize this obligation, and provide DMMs with discretion to fulfil it. *See* NYSE Rule 104(a)(2) (DMM's responsibilities include "[f]acilitat[ing] openings . . . for each of the securities in which the DMM is registered as required under Exchange rules. This *may* include supplying liquidity *as needed*." (emphasis added)).

[23] NYSE Rule 7.35B(a)(2) ("A DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. The entry of DMM Interest after the end of Core Trading Hours will not be subject to Limit Order Price Protection.").

Closing D Orders should be permitted through the end of the NYSE continuous trading day. Second, the use of DMM Closing D Orders should be allowed *only for the securities in which they act as the DMM*. Third, restrict the use of off-exchange closing auctions, particularly when a person also is trading at or near the close on the NYSE in the same security.

While we strongly urge the Commission to disapprove the entire Proposal, these suggested alternative changes would help reduce the negative impacts to the closing and opening liquidity that would be a direct consequence of the Proposal.

1. Permit DMMs To Enter Closing D Orders Through the End of the NYSE Continuous Trading Day.

First, the DMM Closing D Order should be made available through the close of the continuous market (i.e., up until 4:00 pm). The most important aspect of the new DMM Closing D Order would be to offset risk for the DMM firm. This restricted use of the order should then allow the DMM unit to enter DMM Closing D Orders up until 4:00 pm (with modifications), allowing the DMM to manage risk on whatever side of the market its position is on and to allow it to continue to quote aggressively into the end of continuous market trading. This suggested approach would enable the DMM to help dampen volatility at the end of the NYSE trading day and also permit a DMM to position itself better to assist with a volatile opening the next trading day. Moreover, this suggestion would not in any way lessen NYSE's ability to monitor trading of DMMs. Finally, it would be consistent with NYSE's proclaimed goal of increasing market efficiency by enabling DMMs to help manage a stock's closing and opening during volatile periods.

2. Limit DMM Closing D Orders to Only a DMM's Names.

Second, the DMM Closing D Order should be limited to a DMM's names (i.e., its assigned securities) for the DMM unit rather than being a floor wide accessible order type. The fundamental purpose of the new DMM Closing D Order is to enable the DMM to better offset risk, and we believe that the use of this order should be tailored to this purpose. A DMM does not need access to a floor wide Closing D Order to manage the risk of its DMM names. The expansive uses of DMM Closing D Orders that NYSE seeks to provide DMMs in the Proposal might incentivize some new firms to become DMMs, but it would not encourage such firms to handle a material number of issuers and take on the associated DMM obligations. Rather, it might lead to gamification in the DMM space by incentivizing firms to become DMMs for a handful of names in order to obtain access to floor wide Closing D Orders for their proprietary trading purposes and gain an advantage over competitors unrelated to the DMM function. This type of activity would take away from the current, exclusive function that a floor broker plays in the marketplace yet would not provide any significant benefit to the market.

3. Prohibit Off-Exchange Closing Auctions

Third, NYSE should work with the SEC to prohibit off-exchange closing auctions. NYSE itself has long emphasized the importance of the primary exchange closing auction and the damage caused by off-exchange closings. The recent Proposed Rule Change to Introduce a Bats Market Close (the "Bats Proposal") illustrates NYSE's historical position well. At issue in the Bats Proposal was whether to permit Bats BZX Exchange, Inc. to hold a closing action that would use the closing price from the primary listing exchanges.[24]

NYSE strenuously objected to the Bats Proposal. NYSE highlighted that if off-exchange closings were permitted, then interest in a security would be "fragment[ed]"—i.e., there would be lower liquidity in the primary exchange closing.[25] And—highly relevant to the arguments at issue here—NYSE argued that "[l]ess liquid closing auctions on the primary listing exchange will be easier to manipulate."[26] NYSE was right then—less liquidity means increased volatility and increased potential for manipulation—and should take a consistent approach now.

Despite objections from NYSE and many others (GTS included),[27] the Bats Proposal was ultimately adopted.[28] Today, a number of major financial market participants now hold off-exchange closing auctions using the closing price of primary listing exchanges. The increasing prevalence of these off-exchange auctions has indeed made the NYSE closing less liquid and decreased overall transparency in the market. At the same time, off-exchange auction activity directly impacts the trading that does occur on NYSE because these participants must offset their closing auction risk into the NYSE market. These developments associated with off-exchange auctions have already increased the risk faced by DMMs in close. The proposed rule would only serve to compound that risk and take it to drastically increased levels.

NYSE and the SEC could, however, help bring end of day volatility and associated DMM risk back down by prohibiting off-exchange closing auctions. Such a move would not only be consistent with prior arguments made by NYSE and supported by GTS, but it would also concentrate more volume to the primary exchange near the close and thereby increase liquidity at a crucial moment in the trading day. That increased volume and liquidity would not just lower

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[24] Securities and Exchange Commission Release No. 34-80683 (May 16, 2017), 82 FR 23320 (Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28) ("Release 34-80683").

[25] June 13, 2017, Letter from Elizabeth K. King (General Counsel at NYSE) Regarding Bats Proposal at 2 ("NYSE Letter") ("[T]he BZX Proposal would fragment the closing interest in a security, both by time and venue. This fragmentation would impair the closing price on which issuers and investors so heavily rely.").

[26] NYSE Letter at 2.

[27] *See, e.g.*, June 22, 2017, Letter from Ari M. Rubenstein (Co-Founder and CEO of GTS) Regarding Bats Proposal.

[28] Securities Exchange Commission Release No. 34-82522 (January 17, 2018), 83 FR 3205 (Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28) ("Order"). As noted in the Order, "Bats Market Close" was renamed to "Cboe Market Close." *See* Order, 83 FR at 3206.

DMM risk, it would make the closing more deterministic, and less volatile, which appears to be one of NYSE's goals as articulated in this Proposal.

Conclusion

In sum, the Proposal does not further its stated goals, does not further the statutory obligations at issue, needlessly exposes DMMs to significant risk, and upends the balance between DMM obligations and market benefits. Further, the Proposal directly counters NYSE's frequent public statements about the substantial benefits of DMM flexibility in liquidity provision. As a result, the SEC should disapprove the Proposal in its entirety. If, however, the SEC does determine to act, we respectfully submit that it direct NYSE to amend the Proposal to adopt all of the alternative solutions proposed in this letter (as well as NYSE working with the SEC to make the change on off-exchange trading noted above).

GTS appreciates the opportunity to provide these comments. We are happy to answer any questions and to discuss these issues further with the Commissioners and Staff at your earliest convenience.

Respectfully submitted,

/s/ Richard Grant

Richard Grant
General Counsel
GTS Securities, LLC
[redacted]

cc: The Honorable Gary Gensler, Chair, Securities and Exchange Commission
The Honorable Hester M. Peirce, Commissioner, Securities and Exchange Commission
The Honorable Allison Herren Lee, Commissioner, Securities and Exchange Commission
The Honorable Caroline A. Crenshaw, Commissioner, Securities and Exchange Commission
Haoxiang Zhu, Director, Trading and Markets, Securities and Exchange Commission
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