CITADEL | Securities

March 20, 2024

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Regarding Enhancements to its DMM Program (Release No. 34-99511; File No. SR-NYSE-2023-36)

Dear Ms. Countryman:

Citadel Securities appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") order instituting proceedings[1] to determine whether to approve or disapprove the proposal by the New York Stock Exchange LLC (the "NYSE") regarding enhancements to its Designated Market Maker ("DMM") program.

The proposal appropriately reflects market developments over the past two decades. Specifically, we agree with removing legacy restrictions on DMM trading in the final ten minutes of the trading day and the corresponding changes to remove access to intraday aggregate order information. The proposal appropriately removes limitations that impede trading on NYSE by DMMs, while maintaining an appropriate balance between the benefits and obligations of being a DMM. Taken together, these changes will promote competition, liquidity and market quality on NYSE, to the benefit of all market participants.

The Proposed Rule Changes Are Warranted Given Market Structure Developments

First, removing the restriction on DMM trading in the final ten minutes of the trading day (the "Prohibited Transactions Rule") is appropriate given market structure changes that have occurred since the adoption of the rule in 2006. In particular, NYSE (and its DMMs) no longer have the same dominant position in the trading of NYSE-listed securities, given that trading activity and price formation is now broadly dispersed across the various trading centers active in a given security. For example, NYSE market share of consolidated volume in NYSE-listed stocks decreased from 79.1% to less than 25% between 2005 and 2010,[2] where it generally remains today.[3]

[1] Securities Exchange Act Release No. 99511, 82 Fed. Reg. 11893 (February 15, 2024) ("Order Instituting Proceedings").

[2] Securities Exchange Act Release No. 61358, 79 Fed. Reg. 3593, 3595 (January 21, 2010).

[3] *See* Cboe, Market Share Charts, available at https://www.cboe.com/us/equities/market_statistics/venue/.

The Prohibited Transactions Rule, however, only prohibits trading on a single exchange (NYSE), meaning that it reduces liquidity on NYSE and serves as an undue burden on competition during the last ten minutes of trading before the close. Unlike other market participants, DMMs are restricted from setting a new high (or low) price during these ten minutes, which can affect their ability to engage in market making and to provide competitive quotations. This can hinder price discovery, negatively impact the liquidity available on NYSE, and cause trading activity to migrate to other venues where participants are not subject to this same artificial restriction.

Second, notwithstanding the fact that the proposal would remove the Prohibited Transactions Rule, it would maintain an appropriate balance between the benefits and obligations of being a DMM. At the time this rule was adopted, the pre-DMM "specialists" enjoyed significant benefits compared to other market participants, including (a) trade-through protection for manual quotations[4] and (b) an order-by-order advance "look" at incoming orders. DMMs do not have these benefits.

In addition, increasingly automated execution processes have limited the amount of information available to DMMs. For example, floor brokers are no longer permitted to represent verbal interest for the Closing Auction and are instead required to enter orders for the Closing Auction electronically during Core Trading Hours.[5] In addition, this proposal would eliminate DMM access to aggregate order information,[6] further ensuring that DMMs and other market participants are on a level playing field. As a result, the Prohibited Transactions Rule no longer serves any meaningful regulatory purpose, and there is no reason to treat DMMs differently from other market makers at the end of the trading day.

Third, other changes in the proposal promote parity amongst market centers and should enhance overall market quality. For example, we agree with the proposed modifications to the definition of "Aggressing Transaction." While current rules make this determination based on the last trade and last published bid or offer *on NYSE*, the proposal would instead use the last trade from *consolidated market data*. This is particularly important given that, as described above, most of the volume in NYSE-listed securities now occurs away from the NYSE. This change, combined with the proposed revisions to the DMM re-entry requirements, should increase market quality during core trading hours, including the last ten minutes.

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[4] *See* NYSE Information Memo Number 07-62, Elimination of ITS (Intermarket Trading System) (June 29, 2007). Trade-through protection for manual quotations meant that, unless an exception applied, market participants would have to route orders to NYSE specialists to determine if a better priced quotation was available there before executing on an away market.

[5] *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 Fed. Reg. 40885 (July 29, 2021) (SR-NYSE-2020-95).

[6] DMMs would be provided access to aggregate order information on an as needed basis to facilitate a reopening.

For the foregoing reasons, we believe that the proposal should be approved. Please feel free to contact the undersigned with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy