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June 18, 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:

Jane Street Capital, LLC (together with its affiliates, "Jane Street") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") order instituting proceedings to determine whether to approve or disapprove the New York Stock Exchange's ("NYSE") proposal to enhance its Designated Market Maker ("DMM") program. The NYSE's proposed changes would likely increase competition and encourage a wider set of trading firms to consider becoming a DMM. We would like to see the NYSE go further with its overhaul, specifically by creating a DMM reallocation scheme in which firms continually compete with one another on the strength of their quoting and trading to win DMM status for individual securities.

**Description of the proposal**

The NYSE's proposal would eliminate DMMs' privileged intraday access to the total auction-eligible buy and sell interest at each price level ("aggregate order information") for the closing auction. DMMs would only be given access to closing-auction aggregate order information on an as-needed basis after 4 pm ET.

At the same time, the NYSE proposes to eliminate "prohibited transactions," arguing that these DMM-specific guardrails would no longer be needed in a world where DMMs don't have privileged access to information about trading interest in the closing auction. Prohibited transactions are "aggressing transactions" effected by DMMs in the last 10 minutes of the continuous session that create a new daily high (for DMM buy) or low (for DMM sell) on the NYSE, barring certain exceptions.[1] Aggressing transactions are transactions where the DMM crosses the NYSE spread and trades above the NYSE last sale and above the last differently-priced NYSE offer (for DMM buy), or below the NYSE last sale and below the last differently-priced NYSE bid (for DMM sell).

The NYSE's proposal would also ease some restrictions on DMMs' communication with issuers and the DMM's non-floor-based personnel. Similar to its rationale for proposing to eliminate prohibited transactions, the NYSE reasons that the current restrictions on DMM communication would be unnecessary if DMMs no longer have intraday access to non-public information.

Lastly, the NYSE proposes to introduce a DMM Unit Introductory Program in ETPs ("ETP program") to encourage more trading firms to become DMMs in NYSE-listed exchange-traded products.

**Limiting DMMs' access to aggregate order information would promote competition**

Jane Street has long been a proponent of fair and equal disclosure of material trading information, largely because in our experience such disclosure leads to better price discovery.[2] When a single market participant regularly has access to material trading information, it can have a chilling effect on other liquidity providers who know or suspect that they're at a competitive disadvantage. Conversely, market participants will compete vigorously to provide liquidity when they're confident the playing field is level.

Currently, DMMs are the only market participants who can routinely access closing-auction aggregate order information throughout the continuous trading session.[3] It stands to reason that eliminating that access would give non-DMM firms more confidence to compete to provide liquidity into and on the NYSE close.

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[1] See NYSE Rule 104(d), which states that a transaction is not a prohibited transaction if it matches another market's better bid or offer price, brings the price of the security into parity with an underlying or related security or asset, or liquidates or decreases the position of the DMM unit.

[2] For example, Jane Street argued in a comment letter on the Commission's Exchange-Traded Funds rule proposal that ETF issuers should be required to publicly disclose to all market participants material new information about their funds "to ensure a level playing field for all market participants and to promote fair and accurate secondary market pricing." The comment letter is available at https://www.sec.gov/comments/s7-15-18/s71518-4467045-175801.pdf.

[3] A floor broker can request that the DMM reveal closing-auction aggregate order information to that floor broker during the continuous trading session, but the request and the sharing of information must not be done through electronic means. Thus, while DMMs are technically not the only market participant with access to aggregate order information, they're the only participant with direct, on-demand access.

**Prohibited transactions are a vestige of an older market structure**

The NYSE introduced prohibited transactions in 2006 as part of a larger effort to clarify what types of transactions were permissible and impermissible for specialists in the exchange's new Hybrid Market model.[4] At that time, the NYSE still had the lion's share of the trading volume in its own listings.[5] Specialists in the Hybrid Market retained unique quoting and trading capabilities and had privileged access to the exchange order book.[6]

Fast forward to today, and DMMs' influence over the trading and pricing of NYSE-listed securities is dramatically less. The NYSE is one of sixteen exchanges vying to set the inside market, and its market share is considerably lower than it was 18 years ago. DMMs still enjoy some unique structural advantages—parity, for example, and the ability to price the closing auction within pre-defined bounds—but their privileged access to floor-based trading information has been gradually stripped away over the years.

According to the NYSE, aggregate order information is the last remaining piece of non-public trading information to which DMMs have intraday access. If that access is revoked per the proposal, it would seem that DMMs would no longer enjoy an informational advantage in the final 10 minutes of the trading session. As such, it seems as though the Commission could safely eliminate prohibited transactions because they served the precautionary purpose of constraining the behavior of market participants who had the informational advantage that is now going away.

Meanwhile, eliminating prohibited transactions would reduce the operational complexity of the DMM model, making it more attractive for prospective new entrants. Incidentally, eliminating the requirement to post liquidity following an aggressing transaction[7] would similarly reduce

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[4] See SEC Release No. 34-54860 (File No. SR-NYSE-2006-76), available at https://www.sec.gov/files/rules/sro/nyse/2006/34-54860.pdf, in which the NYSE proposes definitions for prohibited transactions, neutral transactions, non-conditional transactions, and conditional transactions.

[5] In January 2005, the NYSE had 79% of the trading volume in its listings per the SEC's 2010 Concept Release on Equity Market Structure (https://www.sec.gov/files/rules/concept/2010/34-61358.pdf). By contrast, the NYSE had just 24% market share of its own listings in 2023 according to data from Cboe Global Markets.

[6] See SEC Release No. 34-53539 (File No. SR-NYSE-2004-05), available at https://www.sec.gov/files/rules/sro/nyse/34-53539.pdf, in which the NYSE explains that "specialists would be permitted to establish electronic connections to the Display Book system that would provide them with access to certain information before other market participants, and be permitted to make a range of specified quoting and trading decisions based on that information."

[7] Aggressing transactions are transactions where the DMM crosses the NYSE spread and trades above the NYSE last sale and above the last differently-priced NYSE offer (for DMM buy), or below the NYSE last sale and below the last differently-priced NYSE bid (for DMM sell). Per NYSE Rule 104(d)(2) and (3) ("Re-Entry Obligations" and

complexity and enhance the attractiveness of the DMM role. As with prohibited transactions, it seems as though there's little justification for such a requirement in a modern market structure characterized by multiple exchanges and liquidity providers competing on a relatively level playing field.

**ETP program highlights the need for incentives to compete**

We fully support the NYSE's goal of fostering more competition for new DMM allocations in the ETP space. A more consequential issue, however, is the extent to which the NYSE is interested in fostering competition for reallocations of existing listings including corporate listings. Under the current rules, a DMM can only lose its DMM status for a security if its performance is deemed "egregiously deficient" by the NYSE or if the issuer requests a change.[8] We understand that in practice it is extremely rare for DMMs to lose DMM status, meaning that other DMMs have virtually no opportunity to "win" the allocation of an existing listing.

One way for the NYSE to harness the power of competition for the direct benefit of investors and issuers would be to periodically reallocate DMM assignments based on how well firms perform across a handful of market quality metrics. Such a reallocation scheme, if designed properly, would likely result in better market quality with minimal disruption to issuer/DMM relationships.

**Conclusion**

The NYSE's proposal to eliminate DMMs' privileged intraday access to closing-auction aggregate order information while concurrently eliminating prohibited transactions would level the playing field with little observable downside. Looking ahead, we would like to see the NYSE contemplate a more dynamic, competition-based reallocation methodology for its existing corporate listings.

Sincerely,

/s/ Raz Tirosh

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"PPP Guidelines," respectively), DMMs that have effected an aggressing transaction must post liquidity on the opposite side of the market to essentially replenish some of the liquidity that they've taken. The NYSE's proposal would modify the definition of aggressing transactions and the re-entry obligations, but the substance of the rule—that DMMs crossing the spread and taking liquidity need to then post liquidity on the opposite side of the market—would remain.

[8] NYSE Rule 103B governs DMM reallocation.