

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69575; File Nos. SR-NYSE-2012-57; SR-NYSEMKT-2012-58)

May 14, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Disapprove Proposed Rule Changes Deleting NYSE Rules 95(c) and (d) and NYSE MKT Rules 95(c) and (d) – Equities and Related Supplementary Material

On October 26, 2012, the New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Exchanges”) each 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> proposed rule changes (“Proposals”) to delete NYSE Rules 95(c) and (d) and related Supplementary Material and NYSE MKT Rules 95(c) and (d) – Equities and related Supplementary Material, respectively. The Proposals were published for comment in the Federal Register on November 15, 2012.<sup>3</sup> The Commission received no comment letters on the Proposals.

On December 21, 2012, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to disapprove the Proposals, to February 13, 2013.<sup>4</sup> On February 13, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the Proposals.<sup>5</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 68185 (November 8, 2012), 77 FR 68188 (SR-NYSE-2012-57) (“NYSE Notice”); Release No. 68186 (November 8, 2012), 77 FR 68191 (SR-NYSEMKT-2012-58) (“NYSE MKT Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 68522, 77 FR 77160 (December 31, 2012) (SR-NYSE-2012-57); Release No. 68521, 77 FR 77152 (SR-NYSEMKT-2012-58) (December 31, 2012).

<sup>5</sup> See Securities Exchange Act Release No. 68923 (February 13, 2013), 78 FR 11928 (February 20, 2013) (“Order Instituting Proceedings”).

Section 19(b)(2) of the Act<sup>6</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the Proposals not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the Proposals, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The Proposals were published for notice and comment in the Federal Register on November 15, 2012. May 14, 2013 is 180 days from that date, and July 13, 2013 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Proposals so that it has sufficient time to consider the Proposals. Specifically, as the Commission noted in the Order Instituting Proceedings, the Proposals raise the issue that elimination of the Rule 95(c) restriction on Floor brokers in connection with intra-day trading, as contemplated by the Proposals, may not be consistent with the Act in light of other benefits currently conferred by the Exchanges upon Floor brokers. For example, under the Exchanges' rules, a Floor broker is entitled to a potentially preferential "parity" allocation of shares of an Exchange execution, as compared with off-Floor market participants that place orders on the Exchanges' respective books.<sup>7</sup> Accordingly, a customer of a Floor broker engaged in intra-day trading, through an algorithmic proprietary trading strategy or otherwise, may have an advantage over market participants pursuing similar strategies directly

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<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See NYSE Rule 72(c)(ii) ("For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to herein as "Book Participant") shall constitute individual participants. The orders represented in the Book Participant in aggregate shall constitute a single participant and will be allocated shares among such orders by means of time priority with respect to entry."); see also NYSE MKT Rule 72(c)(ii) (same).

on the Exchanges' respective books, by virtue of the Floor broker's parity status. The restrictions contained in Rules 95(c) and (d) today may serve to help counterbalance those advantages.<sup>8</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> designates July 12, 2013, as the date by which the Commission shall either approve or disapprove the Proposals.<sup>10</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> See Order Instituting Proceedings, supra note 5 at 11929, 11930.

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

<sup>10</sup> The Commission notes that July 13, 2013 is a Saturday and is, therefore, designating July 12, 2013 as the date by which the Commission shall either approve or disapprove the Proposals.

<sup>11</sup> 17 CFR 200.30-3(a)(57).