

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70047; File Nos. SR-NYSE-2013-21; SR-NYSEMKT-2013-25]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes Amending NYSE Rule 104 and NYSE MKT Rule 104—Equities, as Modified by Amendment Nos. 1, To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers, To Make Exchange Systems Available to DMMs That Would Provide DMMs With Certain Market Information, To Amend the Exchanges' Rules Governing the Ability of DMMs To Provide Market Information to Floor Brokers, and To Make Conforming Amendments to Other Rules

July 26, 2013.

I. Introduction

On April 9, 2013, 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")¹ and Rule 19b-4 thereunder,² proposed rule changes ("Proposals") to amend certain of their respective rules relating to Designated Market Makers ("DMMs")³ and Floor brokers.

The Proposals were published for comment in the **Federal Register** on April 29, 2013.⁴ The Commission

received two comment letters on the NYSE proposal.⁵ On June 11, 2013, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to disapprove the Proposals, to July 26, 2013.⁶ This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the Proposals.

II. Background

The Proposals seek to amend the Exchanges' rules in several ways. First, the Exchanges propose to codify certain trading floor functions that may be performed by DMMs. Second, the Exchanges propose to allow DMMs to access Exchange systems that would provide DMMs with additional order information about the securities in which they are registered. Third, the Exchanges propose to make certain conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems, and to specify what information about Floor broker agency interest files ("e-Quotes") is available to the DMM. Finally, the Exchanges propose to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and others.⁷

Amendment No. 1 to the Proposals. The purpose of this amendment was to file the Exhibit 3 which was not included in the April 9, 2013 filings.

⁵ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Daniel Buena, Lecturer in Management, London School of Economics and Yuval Millo, Professor of Social Studies of Finance, University of Leicester, dated May 20, 2013 ("LSE Letter"); Letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated May 14, 2013 ("Angel Letter"). Although the comment letters were only explicitly directed to the NYSE proposal, the NYSE and NYSE MKT proposals are essentially identical for relevant purposes. As such, this order references both Proposals when discussing the comment letters.

⁶ See Securities Exchange Act Release No. 69736, 78 FR 36284 (June 17, 2013) (SR-NYSE-2013-21); Release No. 69733, 78 FR 36284 (SR-NYSEMKT-2012-25) (June 17, 2013).

⁷ On October 31, 2011, NYSE and NYSE Amex LLC (the predecessor entity of NYSE MKT) ("NYSE Amex") each filed with the Commission proposed rule changes to amend Rule 104 (the "2011 Proposals") that proposed largely identical changes to the relevant rules as the instant Proposals. The 2011 Proposals were published for comment in the **Federal Register** on November 17, 2011. See Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR-NYSEAmex-2011-86) ("NYSE Amex Notice") and 65736 (November 10, 2011), 76 FR 71399 (SR-NYSE-2011-56) ("NYSE Notice"). The Commission received no comment letters on the Proposals. On December 22, 2011, the Commission extended the time period to February 15, 2012, in which to approve the 2011 Proposals, disapprove the 2011 Proposals, or institute proceedings to determine whether to approve or disapprove the 2011 Proposals. See Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011). The

A. Trading Floor Functions

The Exchanges propose to codify certain traditional Trading Floor functions that were formerly performed by specialists that are now performed by DMMs, and which were described in each SRO's respective Floor Official Manual.⁸ The proposed rules would specify four categories of trading floor functions that DMMs could perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel, including managing trading crowd activity and facilitating Floor broker executions at the post;⁹ (2) facilitating Floor broker interactions, including either participating as a buyer or seller, and appropriately communicating to Floor brokers the availability of other Floor broker contra-side interest;¹⁰ (3) assisting Floor

Commission received no comment letters on the 2011 Proposals during the extension. On February 15, 2012, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the 2011 Proposals. See Securities Exchange Act Release No. 66397, 77 FR 10586 (February 22, 2012). The Commission received six comment letters supporting the 2011 Proposals after instituting proceedings. After the Commission issued a notice of designation of longer period for Commission action on May 14, 2012, see Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012), the Commission disapproved the 2011 Proposals on July 13, 2012. See Securities Exchange Act Release No. 67437, 77 FR 42525 (July 13, 2012) ("Disapproval Order").

⁸ See, e.g., *NYSE 2004 Floor Official Manual, Market Surveillance June 2004 Edition*, Chapter Two, Section I, at 7 ("specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities"), Section I.B.3. at 10-11 ("[i]n opening and reopening trading in a listed security, a specialist should . . . [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate" and "[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary"), Section I.B.4. at 11 ("In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows . . . [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner."), and Section I.B.5. at 12 (A specialist should "[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors."). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 of this filing.

⁹ See *id.* at Section I.A. at 7 ("specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities").

¹⁰ See *id.* at Section I.B.3. at 10-11 ("[i]n opening and reopening trading in a listed security, a specialist should . . . [s]erve as the market

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Rule 98(b)(2). "DMM unit" means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. The term "DMM" means any individual qualified to act as a DMM on the floor of the Exchange under NYSE Rule 103. See also NYSE MKT Equities Rule 2(i). Rule 2(i) defines the term "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE MKT Equities Rule 2(j) defines the term "DMM unit" as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE MKT Equities Rule 98.

⁴ See Securities Exchange Act Release No. 69427 (April 23, 2013), 78 FR 25118 (SR-NYSE-2013-21) ("NYSE Notice"); Release No. 69428 (April 23, 2013), 78 FR 25102 (SR-NYSEMKT-2013-25). On April 18, 2013, the Exchanges filed Partial

brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker;¹¹ and (4) researching the status of orders or questioned trades.¹²

B. DMM Access to Additional Order Information

Each SRO proposes to make Exchange systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest;¹³ (B) disaggregated information about the price and size of any individual order or e-Quote and the entering and clearing firm information for such orders, except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information.¹⁴ The Proposals would make available to DMMs disaggregated information about the following interest in securities in which the DMM is

coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate" and "[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary").

¹¹ See *id.* at Section I.B.4. at 11 ("In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows . . . [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.").

¹² See *id.* at Section I.B.5. at 12 (A specialist should "[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.").

¹³ Exchange systems currently make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-floor participants; (b) all Minimum Display Reserve orders, including the reserve portion; (c) all displayable floor broker agency interest files ("e-Quotes"); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the floor broker elects to exclude that reserve quantity from availability to the DMM.

¹⁴ For the latter two categories, the DMM also would have access to entering and clearing firm information for each order and, as applicable, the badge number of the floor broker representing the order. According to the Exchanges, the systems would not contain any information about the ultimate customer (*i.e.*, the name of the member or member organization's customer) in a transaction.

registered: (a) The price and size of all displayable interest submitted by off-Floor participants (off-Floor participants may submit non-displayable interest that is hidden from the DMM);¹⁵ and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.¹⁶

C. Conforming Amendments and Floor Broker e-Quote Information

The Exchanges also propose to make conforming amendments to their rules to reflect the additional order information that would be available to DMMs through Exchange systems, and to specify what information about e-Quotes is available to the DMM. Specifically, the Exchanges propose to revise NYSE Rule 70 and NYSE MKT Rule 70 governing e-Quotes to reflect that disaggregated order information would be available to the DMM except as elected otherwise. The Exchanges would allow a Floor broker to enter e-Quotes with reserve interest ("Reserve e-Quote") with or without a displayable portion.

A Reserve e-Quote with a displayable portion would participate in manual and automatic executions. Order information at each price point, including the reserve portion, would be included in the aggregate interest available to the DMM. Order information at each price point would be available to the DMM on a disaggregated basis as well. If the Floor broker chooses to exclude the Reserve e-Quote with a displayable portion from the DMM, then the DMM would have access to the entire portion on an aggregated basis but would not have access to any of that interest on a disaggregated basis.

A Reserve e-Quote with an undisplayable portion would also participate in manual and automatic executions. Like the Reserve e-Quote with a displayable portion, order information at each price point would be included in the aggregate interest available to the DMM. Again, like the Reserve e-Quote with a displayable portion, order information at each price point would be available to the DMM on a disaggregated basis as well. If the Floor broker chooses to exclude the Reserve e-Quote with an undisplayable portion from the DMM, however, then the DMM would not have access to such

interest on either an aggregated basis or a disaggregated basis. Such interest would not participate in manual executions.

In addition, the Exchanges propose to delete rules which currently prohibit DMMs from using the Display Book system to access information about e-Quotes excluded from the aggregated agency interest and Minimum Display Reserve Order information, other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.¹⁷

The Exchanges note that both Floor brokers and off-Floor participants would have the continued ability to enter partially or completely "dark" orders that are not visible to the DMM, which would prevent any communication about such interest between the DMM and Floor brokers.

D. Ability of DMMs To Provide Market Information on the Trading Floor

The Exchanges also propose to modify the manner under which DMMs would be permitted to provide market information to Floor brokers and visitors on the trading floor, provided that the market participant entering the order had not opted out of such availability. Specifically, the proposed rules would permit a DMM to provide the market information to which he or she has access to a: (1) Floor broker in response to an inquiry in the normal course of business; or (2) visitor to the trading floor for the purpose of demonstrating methods of trading. As such, Floor brokers would be able to access disaggregated order information that market participants have not otherwise elected to be hidden from the DMM. A Floor broker would not be able to submit such an inquiry for market information by electronic means, and the DMM's response containing market information could not be delivered through electronic means.

Because the proposed rule expands on and incorporates the current SRO rules regarding disclosure of order information by DMMs, the Exchanges are proposing to delete these rules.¹⁸ The current rules provide that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the trading floor.

¹⁵ See NYSE and NYSE MKT Rule 13, defining non-displayed order types.

¹⁶ The Exchanges previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchanges stopped making such information available to DMMs on January 19, 2011. See NYSE and NYSE Amex Information Memo 11-03.

¹⁷ See proposed deletions to NYSE Rule 104(a)(6) and NYSE MKT Rule 104(a)(b).

¹⁸ The Exchanges are also proposing conforming amendments to correct cross-references to the former rule.

This aspect of the current rule is replicated in the proposed rules. Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System ("ITS"). According to the Exchanges, this text is obsolete as the ITS Plan has been eliminated and therefore the Exchanges are proposing to delete it. Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule ("CCS") interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe in the normal course of business. The proposed rules would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under current rules, but also with the disaggregated and post-trade order information described above.¹⁹

The proposed rules would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided "in response to an inquiry from a member conducting a market probe in the normal course of business," as currently provided in the SRO rules. Under the Proposals, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and Floor brokers would only be able to access such market information through a direct manual interaction with a DMM at the post.

III. Comment Letters

The Commission received two comment letters in response to the Proposals.²⁰ The first commenter offered several arguments in support of the Proposals. First, the commenter stated that, by permitting DMMs to use both pre- and post-trade information that is already present on the Exchanges' systems, the Proposals promote the legitimate Floor function of

matching buyers and sellers.²¹ This could promote just and equitable principles of trade, and would be in the public interest.²² According to this commenter, the Proposals would enable market participants to trade larger blocks of stock with minimal market impact and could improve execution quality, especially for large buy-side institutions such as mutual funds that trade on behalf of retail investors.²³ The commenter also stated that the Proposals contained sufficient safeguards to protect investors.²⁴ Specifically, the commenter stated that institutional investors monitor execution quality very closely, and that if the Proposals were to hurt execution quality on the Exchanges, market participants would migrate to other exchanges.²⁵ The commenter also stated that the Proposals do not permit unfair discrimination, as any market participant that wanted to avail itself to such disaggregated order information could route its orders to Floor brokers.²⁶

The second commenter expressed qualified support for the proposal.²⁷ Citing its research, this commenter stated that communicating partially disaggregated order information from DMMs to Floor brokers would have a positive effect on price discovery, as it would assist DMMs and Floor brokers in finding the counterparties for certain trades.²⁸ In this way, the commenter believed that the Proposals could incentivize transactions and contribute to greater liquidity in the market.²⁹ However, the commenter also noted the importance of maintaining controls on the dissemination of such information, as the dissemination of excessive information may be detrimental to the investor that originated the order.³⁰ In that regard, the commenter noted that NYSE maintained a system of formal rules and sanctions, in addition to the informal discipline that exists on the Floor, that safeguard the disclosure of order information.³¹ In contrast, however, the commenter noted that such controls did not exist outside of the Floor.³² As such, the commenter stated that disaggregated order information should not be made available to market participants outside

the floor of the NYSE, as there would "be no means to control the use that this information is put to."³³

IV. Proceedings To Determine Whether To Approve or Disapprove SR-NYSE-2013-21 and NYSEMKT-2013-25 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposals should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposals that are discussed below. Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment to inform the Commission's analysis of whether to approve or disapprove the Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act³⁴ requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Section 6(b)(8) of the Act³⁵ requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

In the Proposals, the Exchanges, among other things, take the position that "[b]roadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate block and other large transactions. . . ." ³⁶ The Exchanges also provide scenarios where a Floor broker that receives disaggregated information about the price and size of individual orders on the Exchange books, along with the identity of the

²¹ *Id.* at 2, 4.

²² See Angel letter at 7–8.

²³ *Id.* at 2.

²⁴ *Id.* at 7.

²⁵ *Id.* at 5.

²⁶ *Id.* at 6–7.

²⁷ See LSE letter, *supra* note 5.

²⁸ *Id.* at 2–3.

²⁹ *Id.* at 1–2.

³⁰ *Id.* at 2.

³¹ *Id.*

³² *Id.*

¹⁹ Because DMMs on the trading floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

²⁰ See *supra* note 5.

³³ *Id.*

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ 15 U.S.C. 78f(b)(8).

³⁶ See NYSE Notice, *supra* note 4, 78 FR at 25121.

broker-dealer that entered the order, might conceivably be better able to facilitate a large transaction for its customer.³⁷

With respect to the ability of Floor brokers to pass this disaggregated information on to their customers, however, the Exchanges simply state that “the Floor broker’s customer potentially could initiate direct contact with the member organization” that entered the order, and thus the re-transmittal of this information “provides a sort of check of the principal on the agent and ensures that the agent adds value.”³⁸ But the Exchanges go on to say that the wider off-floor dissemination of disaggregated information “presents obvious dangers,” given that Exchange rules restricting the proprietary trading of DMMs and requiring the maintenance of informational barriers do not apply to other market participants, so that “there would be no mechanism . . . ensuring that the disaggregated information could only be used for the benefit of investors.”³⁹ This concern was echoed by one of the commenters that, as noted above, did not believe that disaggregated information should be available to market participants outside the floors of the Exchanges.⁴⁰ The Exchanges, however, do not address why the dangers that would arise if disaggregated information were made available generally to off-floor market participants are not present when this same information is made available to off-floor market participants that are Floor broker customers. Nor have the Exchanges described any mechanism by which they would be able to assure that disaggregated information is not misused by Floor broker customers. Accordingly, the Commission is concerned that the Exchanges have not demonstrated why this aspect of the Proposals is designed to protect investors and public interest, and is not designed to permit unfair discrimination, or impose an unnecessary or inappropriate burden on competition.

The Commission therefore believes that questions are raised as to whether the Proposals are consistent with (1) the requirements of Section 6(b)(5) of the Act, including whether they would not be designed to permit unfair discrimination, or would promote just and equitable principles of trade, or

protect investors and the public interest; and (2) the requirements of Section 6(b)(8) of the Act, including whether they would impose an unnecessary or inappropriate burden on competition.

V. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the Proposals. In particular, the Commission invites the written views of interested persons concerning whether the Proposals are inconsistent with Section 6(b)(5), Section 6(b)(8) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.⁴¹

Interested persons are invited to submit written data, views and arguments regarding whether the Proposals should be disapproved by August 22, 2013. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 5, 2013. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSE–2013–21 and SR–NYSEMKT–2013–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–21 and SR–NYSEMKT–2013–25. These file numbers should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposals that are filed with the Commission, and all written communications relating to the Proposals 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 such filings also will be available for inspection and copying at the principal office of the Exchanges. 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–NYSE–2013–21 and SR–NYSEMKT–2013–25 and should be submitted on or before August 22, 2013. Rebuttal comments should be submitted by September 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Kevin M. O’Neill,

Deputy Secretary.

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³⁷ A similar scenario is provided with respect to the provision of disaggregated post-trade information. *Id.* at 25124.

³⁸ *Id.* at 25127.

³⁹ *Id.* at 25127.

⁴⁰ See LSE Letter, *supra* note 5, at 2.

⁴¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular Proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁴² 17 CFR 200.30–3(a)(57).