

income and employment tax purposes. The Incentive Plan provides that the delivery of any shares, or the lifting or lapse of restrictions on any Award, shall be subject to the Participant's satisfaction of all applicable federal, state and local income and employment tax withholding obligations.

3. The Incentive Plan, as amended and restated effective June 20, 2014, was approved by the Company's board of directors ("Board"), including the required majority of the Company's directors with the meaning of section 57(o) of the Act. The Company states that the Board is permitted to allow the Company to withhold shares of Common Stock or purchase shares of Common stock from the Company's Employees to satisfy tax withholding obligations related to the vesting of Restricted Stock, or the exercise of options to acquire Common Stock or Restricted Stock granted pursuant to the Incentive Plan. The Company states that the Incentive Plan further provides the Board with discretion to permit the Company's Employees to pay the exercise price of options to purchase shares of Common Stock or Restricted Stock with shares of Common Stock already held by them or pursuant to net share settlement.

*Applicant's Legal Analysis:*

1. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under other circumstances as the Commission may permit to ensure that the purchase is made on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. The Company states that the withholding or purchase of shares of Restricted Stock and Common Stock in payment of applicable withholding tax obligations or of Common Stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

2. Section 23(c)(3) provides that the Commission may issue an order that would permit a BDC to purchase its shares in circumstances in which the purchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. The Company states that it believes that the requested relief meets the standards of section 23(c)(3).

3. The Company states that these purchases will be made on a basis

which does not unfairly discriminate against the stockholders of the Company because all purchases of Common Stock will be at the closing sales price of the Common Stock on the NASDAQ Global Select Market on the relevant date (*i.e.*, the public market price on the date of vesting of the Restricted Shares, the date of exercise of Non-Statutory Stock Options, and the date of a disqualifying disposition with respect to Incentive Stock Options). The Company further states that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving the Common Stock. The Company submits that because all transactions would take place at the public market price for the Company's common stock, the transactions would not be significantly different than could be achieved by any stockholder selling in a market transaction.

4. The Company submits that the proposed purchases do not raise concerns about preferential treatment of the Company's insiders because the Incentive Plan is a bona fide compensation plan of the type that is common among corporations generally. Further, the Company argues that the vesting schedule is determined at the time of the initial grant of the Restricted Stock and the option exercise price is determined at the time of the initial grant of the options. The Company represents that that all purchases may be made only as permitted by the Incentive Plan and in the discretion of the Board, which is composed of at least a majority of "non-interested" persons within the meaning of section 2(a)(19) of the Act. The Company argues that granting the requested relief would be consistent with policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission for relief under section 23(c) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75038; File No. SR-NYSE-2015-06]

### Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Adopting New NYSE Rule 124 To Conduct a Midday Auction and Amending NYSE Rule 104 To Codify the Obligation of Designated Market Makers To Facilitate the Midday Auction

May 22, 2015.

#### I. Introduction

On February 2, 2015, New York Stock Exchange LLC ("NYSE" or "Exchange") 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> a proposed rule change to institute a daily, single-price auction during the trading day in certain lower-volume securities ("Midday Auction") and to amend NYSE Rule 104 to address the responsibilities and duties of Designated Market Makers ("DMMs") to facilitate the Midday Auction. The proposed rule change was published in the **Federal Register** on February 23, 2015.<sup>3</sup> The Commission has received one comment letter on the proposal.<sup>4</sup> On April 6, 2015, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> On May 20,

<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. 74281 (Feb. 17, 2015), 80 FR 9496 ("Notice"). In the Notice, the Exchange stated its intention to submit a request for exemptive relief, pursuant to Rule 611(d) of Regulation NMS, 17 CFR 242.611(d), from the requirements of Rule 611 of Regulation NMS. See Notice, 80 FR at 9497 n.21. In Amendment No. 1, see *infra*, note 7, the Exchange stated that it will no longer submit a request for exemptive relief because the Exchange believes that the proposed Midday Auction fits within the exception provided by Rule 611(b)(3) of Regulation NMS, 17 CFR 242.611(b)(3). See *infra*, Section III.

<sup>4</sup> See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (Mar. 20, 2015).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 74648, 80 FR 19385 (Apr. 10, 2015). The Commission designated May 24, 2015, as the date by which it should approve, disapprove, or institute

2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>7</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to adopt new NYSE Rule 124 to conduct a daily Midday Auction in certain lower-volume securities. Under the proposal, the Exchange would conduct one Midday Auction per trading day<sup>8</sup> for each security that the Exchange designates as a Midday Auction Stock. Only NYSE-listed securities that have a consolidated average daily trading volume (“CADV”) of 1,000,000 shares or less would be eligible to be designated as a Midday Auction Stock.<sup>9</sup>

The Exchange proposes to update the list of Midday Auction Stocks at least quarterly.<sup>10</sup> The Exchange would not conduct a Midday Auction on trading days when the Exchange is scheduled to

proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> Amendment No. 1 is publicly available on the Exchange’s Web site at: <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2015/NYSE%202015-06,%20Pt.Am.%201.pdf>. In Amendment No. 1, the Exchange proposes to: (1) Allow a member organization to designate an order to cancel at the beginning of the Midday Auction Pause (*see, infra*, note 12 and the accompanying text for the definition of Midday Auction Pause); (2) allow a member organization to designate an order to route to an away market quote that locks or crosses the previously displayed price of the order, during the Midday Auction Pause, in which case the returned quantity of a routed order would also route; (3) have the Exchange cancel, during the Midday Auction Pause, resting and arriving Non-Displayed Reserve Orders and Non-Display Reserve e-Quotes, which the Exchange specifies are not eligible to participate in the Midday Auction; (4) clarify that only orders that are eligible to participate in the Midday Auction would continue to be repriced during the Midday Auction Pause; and (5) prevent the Midday Auction from executing at a price outside of the Limit-Up-Limit-Down Bands or the Exchange’s Trading Collars (*see, infra*, note 33 and the accompanying text), whichever is lower (for a buy imbalance) or higher (for a sell imbalance). Furthermore, the Exchange proposes to make a technical change to Exhibit 5 to correct an errant cross reference in Proposed NYSE Rule 124(e). The Exchange also proposes to add additional text to the filing to explain the revisions contained in Amendment No. 1, to further explain other aspects of the proposed rule change, and to remove from the filing text stating that the Exchange intends to submit separately a request for exemptive relief pursuant to Rule 611(d) of Regulation NMS.

<sup>8</sup> See Proposed NYSE Rule 124(a)(3).

<sup>9</sup> See Proposed NYSE Rule 124(a). The Exchange has represented that approximately 16 percent of the consolidated volume of all NYSE-listed securities consists of NYSE-listed securities with a CADV of 1,000,000 shares or less. *See Notice*, 80 FR at 9496 n.4.

<sup>10</sup> See Proposed NYSE Rule 124(a)(1).

close before 4:00 p.m. ET, and the Exchange would not conduct a Midday Auction in a Midday Auction Stock if that stock is halted, paused, suspended, or not opened at the time of the Midday Auction.<sup>11</sup>

To initiate the Midday Auction, the Exchange would pause trading in Midday Auction Stocks on the Exchange for five minutes (“Midday Auction Pause”) by suspending automatic executions and publishing a zero quote.<sup>12</sup> The Midday Auction Pause would occur between 11:00 a.m. ET and 2:00 p.m. ET at a time specified by the Exchange and communicated to market participants in advance through a Trader Update.<sup>13</sup> The Exchange has stated that the Midday Auction Pause is intended to provide market participants with an opportunity to enter interest intended for the auction.<sup>14</sup>

During the Midday Auction Pause, the Exchange would: (i) Maintain resting orders on the Exchange’s book that would be eligible to participate in the Midday Auction; (ii) accept new orders that would be eligible to participate in the Midday Auction, including Market On-the-Open orders (“MOO Orders”)<sup>15</sup> and Limit On-the-Open orders (“LOO Orders”);<sup>16</sup> (iii) cancel resting and

<sup>11</sup> See Proposed NYSE Rule 124(a)(2). In the Notice, the Exchange represents that, if trading for a Midday Auction Stock is halted, paused, suspended, or not opened at the time of the Midday Auction, the Exchange would not conduct a Midday Auction for that security. *See Notice*, 80 FR at 9496. Instead, under those circumstances, the Exchange would reopen trading for that security pursuant to the applicable procedures, such as those for a reopening following a National Market System Plan to Address Extraordinary Market Volatility (“LULD Plan”) pause or following a regulatory halt. *See id.*; *see also* Securities Exchange Act Release No. 68876 (Feb. 8, 2013), 78 FR 10643 (Feb. 14, 2013) (SR–NYSE–2013–09) (Notice of filing and immediate effectiveness of proposed rule change to establish Exchange rules to comply with the requirements of the LULD Plan).

<sup>12</sup> See Proposed NYSE Rule 124(b). The Exchange has represented that it would publish a zero quote on both the public and proprietary data feeds. *See Notice*, 80 FR at 9496.

<sup>13</sup> See Proposed NYSE Rule 124(b); *see also Notice*, 80 FR at 9496 n.9.

<sup>14</sup> See *Notice*, 80 FR at 9496.

<sup>15</sup> Under the Exchange’s rules, an MOO Order is “a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange. A MOO order will be immediately and automatically cancelled if the security opens on a quote or if it is not executed due to tick restrictions. MOO orders can be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.” *See NYSE Rule 13*.

<sup>16</sup> Under the Exchange’s rules, an LOO Order is “a limit order in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or part thereof, will be immediately and automatically cancelled if by its terms it is not marketable at the opening price, it is not executed on the opening trade of the security on the Exchange, or if the security opens on a quote. LOO orders can be entered before the

arriving Non-Displayed Reserve Orders<sup>17</sup> and Non-Display Reserve e-Quotes,<sup>18</sup> which are not eligible to participate in the Midday Auction;<sup>19</sup> (iv) accept and process cancellations of new and resting orders;<sup>20</sup> (v) continue to re-price sell short orders, including MOO Orders and LOO Orders, consistent with NYSE Rule 440B(e), which is the NYSE rule governing short sales; (vi) continue to re-price and/or cancel orders eligible to participate in the Midday Auction,<sup>21</sup> including MOO Orders and LOO Orders, consistent with NYSE Rule 80C(a)(5);<sup>22</sup> (vii) publish Order Imbalance Information, as defined in NYSE Rule 15(c),<sup>23</sup> approximately every five seconds during the Midday Auction Pause until the Midday Auction Stock reopens; (viii) cancel resting and arriving orders designated to cancel at the start of the Midday Auction Pause;<sup>24</sup> and (ix) route orders designated to route if the order becomes locked or crossed by an away market quote and to route the returned quantity of a routed order.<sup>25</sup>

At the end of the Midday Auction Pause, the Exchange would conduct the Midday Auction.<sup>26</sup> DMMs registered in

open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.” *See NYSE Rule 13*.

<sup>17</sup> Under Exchange Rules, a Non-Displayed Reserve Order is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See NYSE Rule 13*.

<sup>18</sup> Under Exchange Rules, “e-Quotes” are broker agency interest files that a Floor Broker places within the Exchange’s Display Book with respect to orders the Floor Broker is representing. *See NYSE Rule 70(a)*. A Reserve e-Quote is an e-Quote with reserve interest. *See NYSE Rule 70(f)*. A Non-Display Reserve e-Quote is a Reserve e-Quote without a displayable portion. *See NYSE Rule 70(f)(ii)*.

<sup>19</sup> See Amendment No. 1, *supra* note 7.

<sup>20</sup> The Exchange has represented that it processes orders in the same manner during a trading halt or a pause pursuant to the LULD Plan. *See Notice*, 80 FR at 9497.

<sup>21</sup> See Amendment No. 1, *supra* note 7.

<sup>22</sup> NYSE Rule 80C(a)(5) sets forth the LULD rules for the repricing and cancellation of trading interests.

<sup>23</sup> Order Imbalance Information disseminated by Exchange systems prior to the opening transaction is the data feed disseminated by Exchange systems of real-time order imbalances that accumulate prior to the opening transaction on the Exchange and of the price at which interest eligible to participate in the opening transaction may be executed in full. Order Imbalance Information includes all interest eligible for execution in the opening transaction of the security in Exchange systems. *See NYSE Rule 15(c)(1)*. Order Imbalance Information is disseminated on the Exchange’s proprietary data feeds. *See Securities Exchange Act Release No. 74837* (Apr. 29, 2015), 80 FR 25741, 25741 n.4 (May 5, 2015) (SR–NYSE–2015–19).

<sup>24</sup> See Amendment No. 1, *supra* note 7.

<sup>25</sup> See *id.* See also Proposed NYSE Rule 124(b)(1)–(9).

<sup>26</sup> See Proposed NYSE Rule 124(c).

each Midday Auction Security would be responsible for facilitating the Midday Auction for that security, by providing liquidity as needed (under NYSE Rule 104(a)(2))<sup>27</sup> and, under NYSE Rule 123D(1),<sup>28</sup> by conducting the Midday Auction either manually or electronically.<sup>29</sup>

The Midday Auction would reopen the Midday Auction Stocks at a single equilibrium price in the same manner as set forth in NYSE Rule 123D (Openings and Halts in Trading), with two exceptions.<sup>30</sup> The first proposed exception to NYSE Rule 123D would conform the Midday Auction to the way in which the Exchange reopens securities following a LULD Plan pause, as set forth in NYSE Rule 80C(b)(2)(A).<sup>31</sup> NYSE Rule 123D(1) requires the dissemination of an “indication” (*i.e.*, an indication of anticipated price) in connection with any delayed opening, and all indications pursuant to NYSE Rule 123D require the supervision and approval of an Exchange Floor Official. During a Midday Auction Pause, as with an LULD Pause, indications would be permitted, but not required, and prior approval by Exchange officials would not be required before publishing an indication. If an indication were published, it would not need to be updated before the Midday Auction, and the Midday Auction would be permitted to occur outside of any prior indication. Furthermore, as with reopenings after a LULD Pause, a Midday Auction would not be subject to the NYSE Rule 123D requirements that: (i) A minimum of three minutes must elapse between the first indication and a stock’s reopening; or (ii) if more than one indication is published, a minimum of one minute must elapse before a stock’s reopening.<sup>32</sup>

<sup>27</sup> NYSE Rule 104(a)(2) sets forth a DMM’s responsibilities and duties to facilitate openings and reopenings for each of the securities in which the DMM is registered under Exchange rules. *See* NYSE Rule 104(a)(2). NYSE Rule 104(a)(2) also requires DMMs to supply liquidity on the opening and reopening, as needed, for each security in which the DMM is registered. *See id.* The Exchange is proposing to add these liquidity provisions for Midday Auctions to the DMM’s responsibilities and duties under NYSE Rule 104(a)(2).

<sup>28</sup> NYSE Rule 123D(1) provides that openings may be effectuated manually or electronically. *See* NYSE Rule 123D(1).

<sup>29</sup> *See Notice*, 80 FR at 9497.

<sup>30</sup> *See Proposed NYSE Rule 124(c).*

<sup>31</sup> *See Notice*, 80 FR at 9497.

<sup>32</sup> *See Proposed NYSE Rule 124(c)(1).* *See* NYSE Rule 123D(1) (“Generally, a minimum of three minutes must elapse between the first indication and a stock’s opening as measured by the time the indication appears on the PDU. However, when more than one indication is disseminated, a stock may open one minute after the last indication provided that at least three minutes must have elapsed from the dissemination of the first

The second proposed exception to NYSE Rule 123D would provide that the Midday Auction would not execute at a price outside (i) the LULD Price Bands in effect at the time of the Midday Auction, as provided for in NYSE Rule 80C(a)(4), or (ii) the Exchange’s Trading Collars, as provided for in NYSE Rule 1000(c)(i), whichever price threshold is lower (for a buy imbalance) or higher (for a sell imbalance) at the time of the Midday Auction.<sup>33</sup>

Orders would participate in the Midday Auction in the same way they would participate in openings or reopenings, subject to the two exceptions explained above.<sup>34</sup> Additionally, as noted above, the Exchange would cancel resting and arriving Non-Displayed Reserve Orders and Non-Display Reserve e-Quotes during the Midday Auction pause.<sup>35</sup> Orders that are not eligible to participate in openings or reopenings pursuant to NYSE rules would not participate in the Midday Auction.<sup>36</sup> Finally, if there were a significant imbalance in a Midday Auction Stock at the end of the Midday Auction Pause, the Midday Auction Pause could, with the approval of a Floor Governor or two Floor Officials, be converted to an order imbalance halt.<sup>37</sup> If a Midday Auction Pause were converted into an order imbalance halt, each order that had been re-priced would be re-filed according to the order’s original instructions, and the security would be reopened pursuant to the procedures set forth in NYSE Rule 123D.<sup>38</sup>

### III. Summary of Comment Letter and NYSE’s Response

The Commission has received one comment letter on the Exchange’s proposal. The commenter asserts that broad-based, significant changes to equity market structure should be conducted through the Commission rulemaking process, not through a single exchange’s rulemaking process. The

indication.”). An indication published pursuant to NYSE Rule 123D is published to the Consolidated Tape. *See* Securities Exchange Act Release No. 74837 (Apr. 29, 2015), 80 FR 25741, 25741 n.5 (May 5, 2015) (SR-NYSE-2015-19).

<sup>33</sup> *See Proposed NYSE Rule 124(c)(2); see also* Amendment No. 1, *supra* note 7.

<sup>34</sup> *See Proposed NYSE Rule 124(d).*

<sup>35</sup> *See supra*, note 19 and the accompanying text. The Exchange also proposes to continue to re-price sell short orders, including MOO and LOO Orders, consistent with NYSE Rule 440B(e), *see Proposed NYSE Rule 124(b)(5)*, and to continue to re-price and/or cancel orders eligible to participate in the Midday Auction, including MOO and LOO Orders, consistent with the LULD Plan, *see Proposed NYSE Rule 124(b)(6)*.

<sup>36</sup> *See Proposed NYSE Rule 124(d).*

<sup>37</sup> *See Proposed NYSE Rule 124(e).*

<sup>38</sup> *See Proposed NYSE Rule 124(e).*

commenter argues that the Commission should carry out market structure changes in a manner designed to benefit the entire market, rather than approving a self-regulatory organization rulemaking proposal that is designed to improve the market share for a single market participant.

Further, the commenter states that the proposal should not be approved before both the Exchange and the Commission confirm that a member firm that relies on NYSE’s displayed book for compliance with the limit order display requirement of Rule 604 of Regulation NMS (“Limit Order Display Rule”),<sup>39</sup> and whose order is blacked out during the Midday Auction Pause, would still be considered to be in compliance with the Limit Order Display Rule.

Finally, the commenter objects to the Exchange’s statement that it will request an exemption under Rule 611(d) of Regulation NMS<sup>40</sup> for the Midday Auction process. The commenter asserts that the Midday Auction should be designed so that it operates within and in compliance with existing regulatory requirements. The commenter argues that, if the Commission determines that periodic intraday auctions are a beneficial way to improve trading quality in lower-volume securities, the Commission should apply the same rules or relief for those auctions to all market participants. The commenter asserts that the Midday Auction does not qualify for an exemption from Rule 611 of Regulation NMS because the Midday Auction would be substantially different than the operation of a single-priced reopening transaction. The commenter states that a single-priced reopening transaction, as the term is used in Rule 611 of Regulation NMS, is a price discovery event on a single venue that generally occurs when the entire market has halted trading in that security to address unusual market, operational, or regulatory situations. The commenter states that the single-priced reopening transaction exception under Rule 611 of Regulation NMS would not be applicable to a daily auction mechanism whose purpose is to increase the market share of a single exchange.

In Amendment No. 1, the Exchange responds that, to address the commenter’s concerns regarding the Limit Order Display Rule and a member organization’s best-execution requirements, it has amended the proposal. First, the Exchange has amended the proposal to allow a member organization to designate an

<sup>39</sup> 17 CFR 242.604.

<sup>40</sup> 17 CFR 242.611(d).

order not to participate in the Midday Auction (by designating that order to cancel at the beginning of the Midday Auction Pause). The Exchange has further amend the proposal to allow a member organization to designate an order to route to an away market quote that locks or crosses the previously displayed price of the order during the Midday Auction Pause. To further address concerns regarding execution opportunities during the Midday Auction Pause, the Exchange has amended the proposal to cancel Non-Displayed Reserve Orders and Non-Display Reserve e-Quotes resting on the Exchange's book during the Midday Auction Pause and to reject Non-Displayed Reserve Orders and Non-Display Reserve e-Quotes entered during the Midday Auction Pause.

With respect to the applicability of Rule 611 of Regulation NMS, the Exchange states in Amendment No. 1 that it will not be submitting a request for exemptive relief. The Exchange states its belief that the exception under Rule 611(b)(3) of Regulation NMS<sup>41</sup> would apply to the single-priced trade at the conclusion of the Midday Auction conducted pursuant to proposed NYSE Rule 124, because the Midday Auction would result in a single-priced reopening transaction after a trading halt conducted pursuant to Exchange rules and, thus, would be excepted from the Order Protection Rule pursuant to Rule 611(b)(3) under Regulation NMS.

#### IV. Discussion and Commission Findings

After careful review and consideration of the Exchange's proposal and the comment letter, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>42</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>43</sup> which requires, among other things, that the rules of a national securities exchange be designed 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 that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that the proposal, as modified by Amendment No. 1, is reasonably designed to potentially improve market quality in thinly traded securities, including securities issued by small-to-medium-sized issuers, by aggregating intra-day liquidity on the Exchange through an auction process. The Midday Auction would be limited to NYSE-listed stocks that have a consolidated average daily trading volume of 1,000,000 shares or less, and it would provide market participants with a new alternative for seeking liquidity in these stocks. Market participants could participate in the Midday Auction, but they would also be free to route orders to participate in continuous trading on other competing exchanges and trading venues.

The commenter argues that broad-based, significant changes to equity market structure should be conducted through Commission rulemaking and not through a single exchange's self-regulatory organization rulemaking process. The question before the Commission, however, is whether the Exchange's proposal is consistent with the Act. If the Commission finds that the Exchange's proposal is consistent with the Act, the Commission must approve the proposal,<sup>44</sup> and, if the Commission is unable to find that the Exchange's proposal is consistent with the Act, the Commission must disapprove the proposal.<sup>45</sup>

As noted above, the Exchange has proposed an alternative means of aggregating intra-day liquidity—adapting an existing auction mechanism to function during the trading day—and the Commission believes that the Act permits exchanges to experiment with new trading mechanisms, so long as those mechanisms are consistent with the Act and the regulations thereunder. The mere fact that a single exchange

proposes, consistent with the Act, to operate differently from another exchange, or even all other exchanges, or that it seeks to gain market share from its competitors by doing so, does not mean that the exchange's proposed rule change constitutes a broad-based change to equity market structure that should only be accomplished by Commission rulemaking. The current equity market structure features, and the Act permits, fierce competition among numerous national securities exchanges, alternative trading systems, and other trading venues, each of which seeks to gain market share by differentiating itself through offering, among other things, different order types, data products, and trading fees and rebates. The Commission believes that the Exchange's proposal fits comfortably within the bounds of existing competition between trading venues and that it is consistent with the Act.

The commenter has also raised questions with respect to Exchange member firms' obligations under the Limit Order Display Rule. The Exchange has responded to these questions, and broader best-execution concerns, by filing Amendment No. 1, which would: (1) Allow a member organization to designate an order to cancel at the beginning of the Midday Auction Pause; (2) allow a member organization to designate an order to route to an away market quote that locks or crosses the previously displayed price of that order during the Midday Auction Pause; and (3) cancel resting and arriving Non-Displayed Reserve Orders and Non-Display Reserve e-Quotes during the Midday Auction Pause.

The Commission notes that the proposal, as modified by Amendment No. 1, would allow Exchange member organizations to affirmatively opt out of participating in the Midday Auction by designating orders to be canceled at the start of the Midday Auction Pause and to conditionally opt out of the Midday Auction by designating an order to route to away markets that lock or cross the order during the Midday Auction Pause. The Commission believes that the operation of the Midday Auction, including the Midday Auction Pause, would not conflict with the ability of member organizations to comply with their obligations under the Limit Order Display Rule<sup>46</sup> or their best-execution obligations to their customers.

<sup>41</sup> See 17 CFR 242.611(b)(3) (providing an exception from the Order Protection Rule under Rule 611 of Regulation NMS when the "transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center").

<sup>42</sup> In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> See 15 U.S.C. 78s(b)(2)(C)(i) ("The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this chapter and the rules and regulations issued under this chapter that are applicable to such organization.").

<sup>45</sup> See 15 U.S.C. 78s(b)(2)(C)(ii) ("The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i) [*i.e.*, that the proposed rule change is consistent with the Act].").

<sup>46</sup> The Commission notes that Rule 604(b)(5) under Regulation NMS, 17 CFR 242.604(b)(5), exempts from the requirements of the Limit Order Display Rule any customer limit order that is delivered immediately upon receipt to a national securities exchange or national securities association-sponsored system, or an electronic

Finally, the commenter asserts that the Midday Auction does not qualify for an exemption from the requirements of Rule 611 of Regulation NMS because the Midday Auction would be substantially different from the operation of a single-priced reopening transaction. The commenter argues that the Rule 611 exception for reopening auctions was intended to apply in very specific, limited circumstances to address unusual market, operational, or regulatory situations, not to permit daily auction mechanism whose purpose is to increase the market share of a single exchange.

In response, the Exchange has clarified that it will not be submitting a request for exemptive relief under Rule 611 of Regulation NMS because it believes that the Midday Auction would qualify for the single-priced reopening exception of Rule 611(b)(3). The Exchange explains, in Amendment No. 1, that “the single-priced trade at the conclusion of the Midday Auction is a single-priced reopening transaction after a trading halt conducted pursuant to Exchange rules and would be excepted under paragraph (b)(3) of Rule 611 under Regulation NMS from the trade-through requirements under Rule 611.”<sup>47</sup>

The Commission agrees that the proposal falls within the exception for single-priced reopening transactions pursuant to Rule 611(b)(3) of Regulation NMS.<sup>48</sup> Pursuant to Rule 611(a) under Regulation NMS,<sup>49</sup> the Order Protection Rule requires a trading center to have written policies and procedures reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks.<sup>50</sup> Rule 611(b)(3) under Regulation NMS excepts from the Order Protection Rule a single-priced opening, reopening, or closing transaction by the trading center.<sup>51</sup> In adopting Regulation NMS, the Commission directly addressed concerns that a trading center might attempt to use the Rule 611(b)(3)

exception to halt trading and then reopen solely to enable it to trade-through other trading centers.<sup>52</sup> The Commission therefore specified in the Regulation NMS Adopting Release that the exception provided by Rule 611(b)(3) applies “only to single-priced reopenings and therefore requires that a trading center conduct, pursuant to its rules or written procedures, a formalized and transparent process for executing orders during reopening after a trading halt that involves the queuing and ultimate execution of multiple orders at a single equilibrium price.”<sup>53</sup> Neither the text of Rule 611(b)(3), nor the Commission’s discussion in the Regulation NMS Adopting Release, requires that the relevant trading halt be a market-wide regulatory halt or that it necessarily address unusual market, operational, or regulatory situations.

As proposed, the Midday Auction would be conducted once per day, pursuant to Exchange rules and at a time that would be publicly announced in advance. The Midday Auction would halt trading on the Exchange in Midday Auction Securities for five minutes to allow market participants an opportunity to enter, cancel, or modify trading interest. During this five-minute pause, the Exchange would publish Order Imbalance Information, and would be permitted to publish “indications,” to attract liquidity. At the conclusion of the five-minute pause, the Exchange would reopen each of the Midday Auction Stocks, executing the queued orders at a single equilibrium price in the same manner as NYSE Rule 123D reopenings.

The Commission believes that the proposal is not designed to permit the Exchange to declare a trading halt merely to be able to circumvent the operation of the Order Protection Rule upon reopening. Instead, the Exchange has proposed a formalized and transparent process for the Midday Auction that would involve the queuing and execution of multiple orders at a single equilibrium price, pursuant to a trading halt declared pursuant to its own rules. The Commission therefore believes that the proposal falls within the exception for single-priced reopenings pursuant to Rule 611(b)(3) of Regulation NMS.<sup>54</sup>

For the above reasons, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Act.

## V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. 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](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2015–06 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–06. This file number 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 filing also will be available for inspection and copying at the principal office of the Exchange. 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–2015–06 and should be submitted on or before June 19, 2015.

communications network that complies with the requirements of § 242.602(b)(5)(ii) with respect to that order.

<sup>47</sup> Amendment No. 1, *supra* note 7.

<sup>48</sup> 17 CFR 242.611(b)(3).

<sup>49</sup> 17 CFR 242.611(a).

<sup>50</sup> A trade-through occurs when one trading center executes an order at a price that is inferior to the price of a protected quotation displayed by another trading center. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37501 (June 29, 2005) (File No. S7–10–04) (“Regulation NMS Adopting Release”). An “NMS stock” means any security or class of securities, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. See 17 CFR 242.600(b)(46), (47).

<sup>51</sup> See 17 CFR 242.611(b)(3).

<sup>52</sup> See Regulation NMS Adopting Release, 70 FR at 37520.

<sup>53</sup> See Regulation NMS Adopting Release, 70 FR at 37521. In addition, the Commission stated that the trading center must have formally declared a trading halt, pursuant to its rules or written procedures, to fall within the Rule 611(b)(3) exception. *Id.*

<sup>54</sup> See 17 CFR 242.611(b)(3).

## VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange proposes to: (1) Allow a member organization to designate an order to cancel at the beginning of the Midday Auction Pause; (2) allow a member organization to designate an order to route to an away market quote that locks or crosses the previously displayed price of the order during the Midday Auction Pause, in which case the returned quantity of a routed order would also route; (3) have the Exchange cancel, during the Midday Auction Pause, resting and arriving Non-Displayed Reserve Orders and Non-Display Reserve e-Quotes, which the Exchange specifies are not eligible to participate in the Midday Auction; (4) clarify that only orders that are eligible to participate in the Midday Auction would continue to be repriced during the Midday Auction Pause; (5) prevent the Midday Auction from executing at a price outside of the LULD Bands or the Exchange's Trading Collars, whichever is lower (for a buy imbalance) or higher (for a sell imbalance). Furthermore, the Exchange proposes to make a technical change to Exhibit 5 to correct an errant cross reference in Proposed NYSE Rule 124(e). The Exchange has also added additional text to the filing to explain the revisions contained in Amendment No. 1, further explained other aspects of the proposed rule change, and removed from the filing text stating that the Exchange intends to submit separately a request for exemptive relief pursuant to Rule 611(d) of Regulation NMS.

The Commission believes that Amendment No. 1 provides market participants with the option to opt out of the Midday Auction, provides that non-displayed orders would not participate in the Midday Auction, and addresses the price limitations within which the Midday Auction would occur. In particular, the Commission believes that permitting member organizations to designate orders to cancel when the Midday Auction Pause begins, or to route when an order becomes locked or crossed by an away market quote during the Midday Auction Pause, should provide Exchange member organizations with appropriate options to help them comply with their best-execution duties to their customers. Furthermore, the

Commission believes that providing for the cancellation or rejection of non-displayed orders during the Midday Auction Pause provides clarity as to how the Exchange intends the proposed auction to operate in regard to order execution. Additionally, the Commission believes that limiting the Midday Auction execution price to the lower (for a buy imbalance) or higher (for a sell imbalance) of the Exchange's LULD Band or Trading Collar Band, at the time of the Midday Auction, should mitigate the risk of an execution at prices that are too far away from the prevailing price of a given security in continuous trading on other national securities exchanges and trading venues. Finally, the Commission believes that the Exchange's proposed technical revisions, and additional explanation regarding the proposal, will provide market participants more clarity regarding how the proposed rule is intended to operate.

The Commission finds that Amendment No. 1 is consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>55</sup> to approve the proposed rule change, as modified by Amendment No. 1, (SR-NYSE-2015-06) be, and hereby is, approved on an accelerated basis.

## VI. Conclusion

*It is therefore ordered* that, pursuant to Section 19(b)(2) of the Act,<sup>56</sup> the proposed rule change, as modified by Amendment No. 1, (SR-NYSE-2015-06) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-12968 Filed 5-28-15; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Recording of Aircraft Conveyances and Security Documents

**AGENCY:** Federal Aviation Administration (FAA), DOT

<sup>55</sup> 15 U.S.C. 78s(b)(2).

<sup>56</sup> 15 U.S.C. 78s(b)(2).

<sup>57</sup> 17 CFR 200.30-3(a)(12).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Approval is needed for security reasons such as mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

**DATES:** Written comments should be submitted by July 28, 2015.

**ADDRESSES:** Send comments to the FAA at the following address: Ronda Thompson, Room 300, Federal Aviation Administration, ASP-110, 950 L'Enfant Plaza SW., Washington, DC 20024.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Ronda Thompson at (202) 267-1416, or by email at: [Ronda.Thompson@faa.gov](mailto:Ronda.Thompson@faa.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Control Number:* 2120-0043

*Title:* Recording of Aircraft Conveyances and Security Documents  
*Form Numbers:* FAA Form 8050-41.

*Type of Review:* Renewal of an information collection.

*Background:* Title 49, U. S. C. Section 44108 provides for establishing and maintaining a system for the recording of security conveyances affecting title to, or interest in U.S. civil aircraft, as well as certain specifically identified engines, propellers, or spare parts locations, and for recording of releases relating to those conveyances. The original security conveyance is examined by the Civil Aviation Registry to insure that it meets recording requirements as set forth in FAR Part 49. If it does, it is given a recording number and made a permanent part of the aircraft record.

*Respondents:* Approximately 45,469 lienholders.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 1 hour.