

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 42	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2011 - * 55	Amendment No. (req. for Amendments *)
Proposed Rule Change by New York Stock Exchange Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input checked="" type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). Proposing a one year pilot program that would add new Rule 107C to establish a Retail Liquidity Program				
Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.				
First Name *	Clare	Last Name *	Saperstein	
Title *	Vice President NYSE Regulation Inc			
E-mail *	csaperstein@nyx.com			
Telephone *	(212) 656-2355	Fax	(212) 656-2223	
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.				
Date	10/19/2011			
By	Janet McGinness	Corporate Secretary		
	(Name *)	(Title *)		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		NYX Janet McGinness,		

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) New York Stock Exchange LLC (“NYSE” or the “Exchange”) is proposing a one-year pilot program that would add new Rule 107C to establish a Retail Liquidity Program (“Program” or “proposed rule change”) to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow. A copy of this filing is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office, and at the Public Reference Room of the Securities and Exchange Commission (the “Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete. NYSE plans to implement the Retail Liquidity Program after approval by the Commission and will notify members of the implementation date through a Trader Update or an Information Memo.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Theodore R. Lazo
General Counsel
NYSE Regulation Inc.
(202) 661-8949

Clare F. Saperstein
Vice President
NYSE Regulation Inc.
(212) 656-2355

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange is proposing a one-year pilot program that would add new NYSE Rule 107C to establish a Retail Liquidity Program to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.

Under the proposed rule change, the Exchange would create two new classes of market participants: (1) Retail Member Organizations (“RMOs”), which would be eligible to submit certain retail order flow (“Retail Orders”) to the Exchange, and (2) Retail Liquidity Providers (“RLPs”), which would be required to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the best protected bid or the best protected offer (“PBBO”)¹ (“Retail Price Improvement Order” or “RPI”). Member organizations other than RLPs would also be permitted, but not required, to submit Retail Price Improvement Orders.

The Exchange will submit a separate proposal to amend its Price List in connection with the proposed Retail Liquidity Program. Under that proposal, the Exchange would charge RLPs and other member organizations a fee for executions of their Retail Price Improvement Orders against Retail Orders and in turn would provide a credit to RMOs for executions of their Retail Orders against the Retail Price Improvement Orders of RLPs and other member organizations.

Definitions

The Exchange proposes to adopt the following definitions under proposed NYSE Rule 107C(a). First, the term “Retail Liquidity Provider” would be defined as a member organization that is approved by the Exchange to act as such and to submit Retail Price Improvement Orders according to certain requirements set forth in proposed Rule 107C.

Second, the term “Retail Member Organization” would be defined as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

Third, the term “Retail Order” would be defined as:

- an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not

¹ The terms protected bid and protected offer would have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (“NBB”) and national best offer (“NBO”) will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

originate from a trading algorithm or any other computerized methodology; or

- a proprietary order of an RMO that results from liquidating a position acquired from the internalization of an order that satisfies the requirements of the preceding subparagraph.

Finally, the term “Retail Price Improvement Order” would be defined as non-displayed interest in NYSE-listed securities that is better than the best protected bid (“PBB”) or best protected offer (“PBO”) by at least \$0.001 and that is identified as a Retail Price Improvement Order in a manner prescribed by the Exchange.² The price of an RPI would be determined by an RLP’s entry of the following into Exchange systems: (1) RPI buy or sell interest; (2) an offset, if any; and (3) a ceiling or floor price. The Exchange expects that RPI sell or buy interest typically would be entered to track the PBBO. The offset would be a predetermined amount by which the RLP is willing to improve the PBBO, subject to a ceiling or floor price. The ceiling or floor price would be the amount above or below which the RLP does not wish to trade. RPIs in their entirety (the buy or sell interest, the offset, and the ceiling or floor) will remain undisplayed. Exchange systems will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders.

RPIs would interact with Retail Orders as follows. Assume an RLP enters RPI sell interest with an offset of \$0.001 and a floor of \$10.10 while the PBO is \$10.11. The RPI could interact with an incoming buy Retail Order at \$10.109. If, however, the PBO was \$10.10, the RPI could not interact with the Retail Order

² Exchange systems would prevent Retail Orders from interacting with Retail Price Improvement Orders if the RPI is not priced at least \$0.001 better than the PBBO. The Exchange notes, however, that price improvement of \$0.001 would be a minimum requirement and RLPs and other member organizations could enter Retail Price Improvement Orders that better the PBBO by more than \$0.001. Exchange systems will accept Retail Price Improvement Orders without a minimum price improvement value; however, such interest will execute at its floor or ceiling price only if such floor or ceiling price is better than the PBBO by \$0.001 or more. Concurrently with this filing, the Exchange has submitted a request for an exemption under Regulation NMS Rule 612 that would permit it to accept and rank the undisplayed Retail Price Improvement Orders. As outlined in the request, the Exchange believes that the minimum price improvement available under the Program, which would amount to \$0.05 on a 500 share order, would be meaningful to the small retail investor. *See* Letter from Janet M. McGinness, Senior Vice President—Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated October 19, 2011 (“Sub-Penny Rule Exemption Request”).

because the price required to deliver the minimum \$0.001 price improvement (\$10.099) would violate the RLP's floor of \$10.10. If an RLP otherwise enters an offset greater than the minimum required price improvement and the offset would produce a price that would violate the RLP's floor, the offset would be applied only to the extent that it respects the RLP's floor. By way of illustration, assume RPI buy interest is entered with an offset of \$0.005 and a ceiling of \$10.112 while the PBB is at \$10.11. The RPI could interact with an incoming sell Retail Order at \$10.112, because it would produce the required price improvement without violating the RLP's ceiling, but it could not interact above the \$10.112 ceiling. Finally, if an RLP enters an RPI without an offset, the RPI will interact with Retail Orders at the level of the RLP's floor or ceiling as long as the minimum required price improvement is produced. Accordingly, if RPI sell interest is entered with no offset and a \$10.098 floor while the PBO is \$10.11, the RPI could interact with the Retail Order at \$10.098, producing \$0.012 of price improvement. Exchange systems will not cancel RPI interest when it is not eligible to interact with incoming Retail Orders; such RPI interest will remain in Exchange systems and may become eligible again to interact with Retail Orders depending on the PBB or PBO.

An RLP would only be permitted to enter a Retail Price Improvement Order for the particular security or securities to which it is assigned as RLP.

RMO Qualifications and Approval Process

Under proposed NYSE Rule 107C(b), any member organization³ could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. Any member organization that wishes to obtain RMO status would be required to submit: (1) an application form; (2) an attestation, in a form prescribed by the Exchange, that any order submitted by the member organization as a Retail Order would meet the qualifications for such orders under proposed Rule 107C; and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.⁴

An RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the member organization to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the

³ An RLP may also act as an RMO for securities to which it is not assigned, subject to the qualification and approval process established by the proposed rule.

⁴ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.⁵

If the Exchange disapproves the application, the Exchange would provide a written notice to the member organization. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 107C(i), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

RLP Qualifications

To qualify as an RLP under proposed NYSE Rule 107C(c), a member organization would be required to: (1) already be approved as a Designated Market Maker ("DMM") or Supplemental Liquidity Provider ("SLP"); (2) demonstrate an ability to meet the requirements of an RLP; (3) have mnemonics or the ability to accommodate other Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.

Because an RLP would only be permitted to trade electronically, a member organization's technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an RLP. If a member organization were unable to support the relevant electronic trading and reporting systems of the Exchange for RLP trading activity, it would not qualify as an RLP.

RLP Approval Process

Under proposed Rule 107C(d), to become an RLP, a member organization would be required to submit an RLP application form with all supporting documentation to the Exchange. The Exchange would determine whether an applicant was qualified to become an RLP as set forth above. After an applicant submitted an RLP application to the Exchange with supporting documentation, the Exchange

⁵ FINRA, on behalf of the Exchange, will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

would notify the applicant member organization of its decision. The Exchange could approve one or more member organizations to act as an RLP for a particular security. The Exchange could also approve a particular member organization to act as RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.

If an applicant were approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.

If the Exchange disapproves the application, the Exchange would provide a written notice to the member organization. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 107C(i) and/or reapply for RLP status 90 days after the disapproval notice is issued by the Exchange.

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under proposed NYSE Rule 107C(e). The withdrawal would become effective when those securities assigned to the withdrawing RLP are reassigned to another RLP. After the Exchange receives the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice is received by the Exchange. If the reassignment of securities takes longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters concerning its previously assigned RLP securities.

RLP Requirements

Under proposed NYSE Rule 107C(f), an RLP would only be permitted to enter Retail Price Improvement Orders electronically and directly into Exchange systems and facilities designated for this purpose and only for the securities to which it is assigned as RLP. In order to be eligible for execution fees that are lower than non-RLP rates, an RLP would be required to maintain (1) a Retail Price Improvement Order that is better than the PBB at least five percent of the trading day for each assigned security; and (2) a Retail Price Improvement Order that is better than the PBO at least five percent of the trading day for each assigned security.

An RLP's five-percent requirements would be calculated by determining the average percentage of time the RLP maintains a Retail Price Improvement Order in each of its RLP securities during the regular trading day, on a daily and monthly basis. The Exchange would determine whether an RLP has met this requirement by calculating the following:

- (1) The “Daily Bid Percentage” would be calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;
- (2) The “Daily Offer Percentage” would be calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;
- (3) The “Monthly Average Bid Percentage” would be calculated for each RLP security by summing the security’s “Daily Bid Percentages” for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and
- (4) The “Monthly Average Offer Percentage” would be calculated for each RLP security by summing the security’s “Daily Offer Percentage” for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only Retail Price Improvement Orders would be used when calculating whether an RLP is in compliance with its five-percent requirements.

The Exchange would determine whether an RLP met its five-percent requirement by determining the average percentage of time an RLP maintains a Retail Price Improvement Order in each of its RLP securities during the regular trading day on a daily and monthly basis. The lower fees would not apply during a month in which the RLP did not satisfy the five-percent requirements. Additionally, beginning with the third month of operation as an RLP, an RLP’s failure to satisfy the five-percent requirements described above for each of its assigned securities could result in action taken by the Exchange, as described below.

The Exchange will not begin calculating whether an RLP meets the quoting requirement during the first two calendar months that the RLP is participating in the Program. If the Program is implemented mid-month, the Exchange will begin calculating the quoting requirement two calendar months after the end of the month in which the program was implemented.

Failure of RLP to Meet Requirements

Proposed NYSE Rule 107C(g) addresses an RLP’s failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP fails to meet any of the requirements of proposed Rule 107C(f) for any assigned RLP security for three consecutive months, the Exchange could, in its discretion, take

one or more of the following actions:⁶ (1) revoke the assignment of any or all of the affected securities from the RLP; (2) revoke the assignment of unaffected securities from the RLP; or (3) disqualify the member organization from its status as an RLP.

The Exchange, in its sole discretion, would determine if and when a member organization is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange would notify an RLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the member organization.

A disqualified RLP could appeal the disqualification as provided in proposed Rule 107C(i) and/or reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.⁷

Failure of RMO to Abide by Retail Order Requirements

Proposed NYSE Rule 107C(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a member organization from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the member organization. A disqualified RMO could appeal the disqualification as provided in proposed Rule 107C(i) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.⁸

Appeal of Disapproval or Disqualification

Proposed NYSE Rule 107C(i) provides appeal rights to member organizations. If a member organization disputes the Exchange's decision to disapprove it under Rule 107C(b) or (d) or disqualify it under Rule 107C(g) or (h), such member organization ("appellant") may request, within five business days after notice of

⁶ As discussed previously, an RLP's failure to satisfy its requirement would result in the RLP no longer being charged the lower fees for execution of its Retail Price Improvement Orders.

⁷ The Exchange notes that the Retail Price Improvement Order executions of a member organization disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP member organizations.

⁸ As above for RLPs, the Retail Order executions of a member organization disqualified from RMO status would thereafter be subject to the transaction pricing applicable to non-RMO member organizations.

the decision is issued by the Exchange, that the Retail Liquidity Program Panel (“RLP Panel”) review the decision to determine if it was correct.⁹

The RLP Panel would consist of the NYSE’s Chief Regulatory Officer (“CRO”), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution. The RLP Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The RLP Panel could overturn or modify an action taken by the Exchange and all determinations by the RLP Panel would constitute final action by the Exchange on the matter at issue.

Retail Liquidity Identifier

Under proposed NYSE Rule 107C(j), the Exchange proposes to disseminate an identifier through proprietary Exchange data feeds when RPI interest priced at least \$0.001 better than the PBB or PBO for a particular security is available in Exchange systems (“Retail Liquidity Identifier”). The Retail Liquidity Identifier would not be disseminated to the Consolidated Quote Stream.

Retail Order Designations

Under proposed NYSE Rule 107C(k), an RMO can designate how a Retail Order would interact with available contra-side interest as follows. As proposed, a Type 1-designated Retail Order would interact only with available contra-side Retail Price Improvement Orders and would not interact with other available contra-side interest in Exchange systems or route to other markets. The portion of a Type 1-designated Retail Order that does not execute against contra-side Retail Price Improvement Orders would be immediately and automatically cancelled. A Type 2-designated Retail Order would interact first with available contra-side Retail Price Improvement Orders and any remaining portion of the Retail Order would be executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to Rule 13. Accordingly, a Type 2-designated Retail Order could interact with other interest in Exchange systems, but would not route to other markets. A Type 3-designated Retail Order would interact first with available contra-side Retail Price Improvement Orders and any remaining portion of the Retail Order would be executed as an NYSE Immediate or Cancel Order pursuant to Rule 13. Accordingly, a Type 3-designated Retail Order could interact with other interest in Exchange systems and, if necessary, would route to other markets in compliance with Regulation NMS.

⁹ In the event a member organization is disqualified from its status as an RLP pursuant to proposed Rule 107C(g), the Exchange would not reassign the appellant’s securities to a different RLP until the RLP Panel has informed the appellant of its ruling.

Priority and Order Allocation

Under proposed NYSE Rule 107C(1), the Exchange proposes that competing Retail Price Improvement Orders in the same security would be ranked and allocated according to price then time of entry into Exchange systems. The Exchange further proposes that executions would occur at the price level that completes the incoming order's execution. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders if such interest is at an eligible price. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with proposed Rule 107C(k). The following example illustrates this proposed method:

PBBO for security ABC is \$10.00 – \$10.05

RLP 1 enters a Retail Price Improvement Order to buy ABC at \$10.01 for 500

RLP 2 then enters a Retail Price Improvement Order to buy ABC at \$10.02 for 500

RLP 3 then enters a Retail Price Improvement Order to buy ABC at \$10.03 for 500

An incoming Retail Order to sell ABC for 1,000 would execute first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 500, because it is the next best priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order executes at the price that completes the order's execution. In this example the entire 1,000 order to sell would execute at \$10.02 because it would result in a complete fill.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at \$10.02 was for 100. The incoming Retail Order to sell 1,000 would execute first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 100, because it is the next best priced bid. RLP 1 would then receive an execution for 400 of its bid for 500, at which point the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order executes at the price that completes the order's execution, which is \$10.01.

Implementation

The Exchange proposes that all NYSE-listed and NYSE Amex Equities traded securities¹⁰ would be eligible for inclusion in the Retail Liquidity Program.¹¹ In

¹⁰ "NYSE Amex Equities traded securities" refers to all securities available to be traded on NYSE Amex Equities, including but not limited to NYSE Amex-listed

order to provide for an efficient implementation, the Retail Liquidity Program would initially cover only a certain specified list of NYSE-listed securities to which RLPs are assigned, as announced by the Exchange via Information Memo. The Exchange anticipates that the securities included within the Retail Liquidity Program would be expanded periodically as demand for RLP assignments develops in response to increased Retail Order activity on the Exchange.¹²

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.¹⁵ The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

The Exchange understands that Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory

securities as well as those listed on the Nasdaq Stock Market traded pursuant to unlisted trading privileges. *See* Securities Exchange Act Release 34-62479, 75 Fed. Reg. 41264 (July 15, 2010).

¹¹ NYSE Amex LLC is filing a companion rule proposal to adopt NYSE Amex Equities Rule 107C. *See* SR-NYSEAmex-2011-84.

¹² The Exchange would announce any such expansions via Information Memo.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors. The Exchange recognizes that sub-penny trading and pricing could potentially result in undesirable market behavior. The Exchange will monitor the Program in an effort to identify and address any such behavior.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 107C. The Program shall expire on [Date will be determined upon adoption of Rule 107C]. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2011-55)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Rule Change Proposing a One-Year Pilot Program Adding New Rule 107C to Establish a Retail Liquidity Program to Attract Additional Retail Order Flow to the Exchange for NYSE-listed Securities While also Providing the Potential for Price Improvement to such Order Flow

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 19, 2011, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a one-year pilot program that would add new Rule 107C to establish a Retail Liquidity Program (“Program” or “proposed rule change”) to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a one-year pilot program that would add new NYSE Rule 107C to establish a Retail Liquidity Program to attract additional retail order flow to the Exchange for NYSE-listed securities while also providing the potential for price improvement to such order flow.

Under the proposed rule change, the Exchange would create two new classes of market participants: (1) Retail Member Organizations (“RMOs”), which would be eligible to submit certain retail order flow (“Retail Orders”) to the Exchange, and (2) Retail Liquidity Providers (“RLPs”), which would be required to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the best protected bid or the best protected offer (“PBBO”)⁴ (“Retail Price Improvement

⁴ The terms protected bid and protected offer would have the same meaning as defined in Regulation NMS Rule 600(b)(57). The PBB is the best-priced protected bid and the PBO is the best-priced protected offer. Generally, the PBB and PBO and the national best bid (“NBB”) and national best offer (“NBO”) will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule

Order” or “RPI”). Member organizations other than RLPs would also be permitted, but not required, to submit Retail Price Improvement Orders.

The Exchange will submit a separate proposal to amend its Price List in connection with the proposed Retail Liquidity Program. Under that proposal, the Exchange would charge RLPs and other member organizations a fee for executions of their Retail Price Improvement Orders against Retail Orders and in turn would provide a credit to RMOs for executions of their Retail Orders against the Retail Price Improvement Orders of RLPs and other member organizations.

Definitions

The Exchange proposes to adopt the following definitions under proposed NYSE Rule 107C(a). First, the term “Retail Liquidity Provider” would be defined as a member organization that is approved by the Exchange to act as such and to submit Retail Price Improvement Orders according to certain requirements set forth in proposed Rule 107C.

Second, the term “Retail Member Organization” would be defined as a member organization (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

Third, the term “Retail Order” would be defined as:

- an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology; or

611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the PBB or PBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

- a proprietary order of an RMO that results from liquidating a position acquired from the internalization of an order that satisfies the requirements of the preceding subparagraph.

Finally, the term “Retail Price Improvement Order” would be defined as non-displayed interest in NYSE-listed securities that is better than the best protected bid (“PBB”) or best protected offer (“PBO”) by at least \$0.001 and that is identified as a Retail Price Improvement Order in a manner prescribed by the Exchange.⁵ The price of an RPI would be determined by an RLP’s entry of the following into Exchange systems: (1) RPI buy or sell interest; (2) an offset, if any; and (3) a ceiling or floor price. The Exchange expects that RPI sell or buy interest typically would be entered to track the PBBO. The offset would be a predetermined amount by which the RLP is willing to improve the PBBO, subject to a ceiling or floor price. The ceiling or floor price would be the amount above or below which the RLP does not wish to trade. RPIs in their entirety (the buy or sell interest, the offset, and the ceiling or floor) will remain undisplayed. Exchange systems will monitor whether RPI buy or sell interest, adjusted by any offset

⁵ Exchange systems would prevent Retail Orders from interacting with Retail Price Improvement Orders if the RPI is not priced at least \$0.001 better than the PBBO. The Exchange notes, however, that price improvement of \$0.001 would be a minimum requirement and RLPs and other member organizations could enter Retail Price Improvement Orders that better the PBBO by more than \$0.001. Exchange systems will accept Retail Price Improvement Orders without a minimum price improvement value; however, such interest will execute at its floor or ceiling price only if such floor or ceiling price is better than the PBBO by \$0.001 or more. Concurrently with this filing, the Exchange has submitted a request for an exemption under Regulation NMS Rule 612 that would permit it to accept and rank the undisplayed Retail Price Improvement Orders. As outlined in the request, the Exchange believes that the minimum price improvement available under the Program, which would amount to \$0.05 on a 500 share order, would be meaningful to the small retail investor. *See* Letter from Janet M. McGinness, Senior Vice President—Legal & Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission dated October 19, 2011 (“Sub-Penny Rule Exemption Request”).

and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders.

RPIs would interact with Retail Orders as follows. Assume an RLP enters RPI sell interest with an offset of \$0.001 and a floor of \$10.10 while the PBO is \$10.11. The RPI could interact with an incoming buy Retail Order at \$10.109. If, however, the PBO was \$10.10, the RPI could not interact with the Retail Order because the price required to deliver the minimum \$0.001 price improvement (\$10.099) would violate the RLP's floor of \$10.10. If an RLP otherwise enters an offset greater than the minimum required price improvement and the offset would produce a price that would violate the RLP's floor, the offset would be applied only to the extent that it respects the RLP's floor. By way of illustration, assume RPI buy interest is entered with an offset of \$0.005 and a ceiling of \$10.112 while the PBB is at \$10.11. The RPI could interact with an incoming sell Retail Order at \$10.112, because it would produce the required price improvement without violating the RLP's ceiling, but it could not interact above the \$10.112 ceiling. Finally, if an RLP enters an RPI without an offset, the RPI will interact with Retail Orders at the level of the RLP's floor or ceiling as long as the minimum required price improvement is produced. Accordingly, if RPI sell interest is entered with no offset and a \$10.098 floor while the PBO is \$10.11, the RPI could interact with the Retail Order at \$10.098, producing \$0.012 of price improvement. Exchange systems will not cancel RPI interest when it is not eligible to interact with incoming Retail Orders; such RPI interest will remain in Exchange systems and may become eligible again to interact with Retail Orders depending on the PBB or PBO.

An RLP would only be permitted to enter a Retail Price Improvement Order for

the particular security or securities to which it is assigned as RLP.

RMO Qualifications and Approval Process

Under proposed NYSE Rule 107C(b), any member organization⁶ could qualify as an RMO if it conducts a retail business or handles retail orders on behalf of another broker-dealer. Any member organization that wishes to obtain RMO status would be required to submit: (1) an application form; (2) an attestation, in a form prescribed by the Exchange, that any order submitted by the member organization as a Retail Order would meet the qualifications for such orders under proposed Rule 107C; and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.⁷

An RMO would be required to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the member organization to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition

⁶ An RLP may also act as an RMO for securities to which it is not assigned, subject to the qualification and approval process established by the proposed rule.

⁷ For example, a prospective RMO could be required to provide sample marketing literature, website screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends its orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and (ii) monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.⁸

If the Exchange disapproves the application, the Exchange would provide a written notice to the member organization. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 107C(i), and/or reapply for RMO status 90 days after the disapproval notice is issued by the Exchange. An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

RLP Qualifications

To qualify as an RLP under proposed NYSE Rule 107C(c), a member organization would be required to: (1) already be approved as a Designated Market Maker ("DMM") or Supplemental Liquidity Provider ("SLP"); (2) demonstrate an ability to meet the requirements of an RLP; (3) have mnemonics or the ability to accommodate other Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities; and (4) have adequate trading infrastructure and technology to support electronic trading.

Because an RLP would only be permitted to trade electronically, a member organization's technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an RLP. If a member

⁸ FINRA, on behalf of the Exchange, will review an RMO's compliance with these requirements through an exam-based review of the RMO's internal controls.

organization were unable to support the relevant electronic trading and reporting systems of the Exchange for RLP trading activity, it would not qualify as an RLP.

RLP Approval Process

Under proposed Rule 107C(d), to become an RLP, a member organization would be required to submit an RLP application form with all supporting documentation to the Exchange. The Exchange would determine whether an applicant was qualified to become an RLP as set forth above. After an applicant submitted an RLP application to the Exchange with supporting documentation, the Exchange would notify the applicant member organization of its decision. The Exchange could approve one or more member organizations to act as an RLP for a particular security. The Exchange could also approve a particular member organization to act as RLP for one or more securities. Approved RLPs would be assigned securities according to requests made to, and approved by, the Exchange.

If an applicant were approved by the Exchange to act as an RLP, the applicant would be required to establish connectivity with relevant Exchange systems before the applicant would be permitted to trade as an RLP on the Exchange.

If the Exchange disapproves the application, the Exchange would provide a written notice to the member organization. The disapproved applicant could appeal the disapproval by the Exchange as provided in proposed Rule 107C(i) and/or reapply for RLP status 90 days after the disapproval notice is issued by the Exchange.

Voluntary Withdrawal of RLP Status

An RLP would be permitted to withdraw its status as an RLP by giving notice to the Exchange under proposed NYSE Rule 107C(e). The withdrawal would become

effective when those securities assigned to the withdrawing RLP are reassigned to another RLP. After the Exchange receives the notice of withdrawal from the withdrawing RLP, the Exchange would reassign such securities as soon as practicable, but no later than 30 days after the date the notice is received by the Exchange. If the reassignment of securities takes longer than the 30-day period, the withdrawing RLP would have no further obligations and would not be held responsible for any matters concerning its previously assigned RLP securities.

RLP Requirements

Under proposed NYSE Rule 107C(f), an RLP would only be permitted to enter Retail Price Improvement Orders electronically and directly into Exchange systems and facilities designated for this purpose and only for the securities to which it is assigned as RLP. In order to be eligible for execution fees that are lower than non-RLP rates, an RLP would be required to maintain (1) a Retail Price Improvement Order that is better than the PBB at least five percent of the trading day for each assigned security; and (2) a Retail Price Improvement Order that is better than the PBO at least five percent of the trading day for each assigned security.

An RLP's five-percent requirements would be calculated by determining the average percentage of time the RLP maintains a Retail Price Improvement Order in each of its RLP securities during the regular trading day, on a daily and monthly basis. The Exchange would determine whether an RLP has met this requirement by calculating the following:

- (1) The "Daily Bid Percentage" would be calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;

(2) The “Daily Offer Percentage” would be calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;

(3) The “Monthly Average Bid Percentage” would be calculated for each RLP security by summing the security’s “Daily Bid Percentages” for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and

(4) The “Monthly Average Offer Percentage” would be calculated for each RLP security by summing the security’s “Daily Offer Percentage” for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

Finally, only Retail Price Improvement Orders would be used when calculating whether an RLP is in compliance with its five-percent requirements.

The Exchange would determine whether an RLP met its five-percent requirement by determining the average percentage of time an RLP maintains a Retail Price Improvement Order in each of its RLP securities during the regular trading day on a daily and monthly basis. The lower fees would not apply during a month in which the RLP did not satisfy the five-percent requirements. Additionally, beginning with the third month of operation as an RLP, an RLP’s failure to satisfy the five-percent requirements described above for each of its assigned securities could result in action taken by the Exchange, as described below.

The Exchange will not begin calculating whether an RLP meets the quoting requirement during the first two calendar months that the RLP is participating in the Program. If the Program is implemented mid-month, the Exchange will begin calculating the quoting requirement two calendar months after the end of the month in which the program was implemented.

Failure of RLP to Meet Requirements

Proposed NYSE Rule 107C(g) addresses an RLP's failure to meet its requirements. If, after the first two months an RLP acted as an RLP, an RLP fails to meet any of the requirements of proposed Rule 107C(f) for any assigned RLP security for three consecutive months, the Exchange could, in its discretion, take one or more of the following actions:⁹ (1) revoke the assignment of any or all of the affected securities from the RLP; (2) revoke the assignment of unaffected securities from the RLP; or (3) disqualify the member organization from its status as an RLP.

The Exchange, in its sole discretion, would determine if and when a member organization is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange would notify an RLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the member organization.

A disqualified RLP could appeal the disqualification as provided in proposed Rule 107C(i) and/or reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.¹⁰

Failure of RMO to Abide by Retail Order Requirements

Proposed NYSE Rule 107C(h) addresses an RMO's failure to abide by Retail Order requirements. If an RMO designates orders submitted to the Exchange as Retail

⁹ As discussed previously, an RLP's failure to satisfy its requirement would result in the RLP no longer being charged the lower fees for execution of its Retail Price Improvement Orders.

¹⁰ The Exchange notes that the Retail Price Improvement Order executions of a member organization disqualified from acting as an RLP would thereafter be subject to the transaction pricing applicable to non-RLP member organizations.

Orders and the Exchange determines, in its sole discretion, that those orders fail to meet any of the requirements of Retail Orders, the Exchange may disqualify a member organization from its status as an RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the member organization. A disqualified RMO could appeal the disqualification as provided in proposed Rule 107C(i) and/or reapply for RMO status 90 days after the disqualification notice is issued by the Exchange.¹¹

Appeal of Disapproval or Disqualification

Proposed NYSE Rule 107C(i) provides appeal rights to member organizations. If a member organization disputes the Exchange's decision to disapprove it under Rule 107C(b) or (d) or disqualify it under Rule 107C(g) or (h), such member organization ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Liquidity Program Panel ("RLP Panel") review the decision to determine if it was correct.¹²

The RLP Panel would consist of the NYSE's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution. The RLP Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The RLP Panel could

¹¹ As above for RLPs, the Retail Order executions of a member organization disqualified from RMO status would thereafter be subject to the transaction pricing applicable to non-RMO member organizations.

¹² In the event a member organization is disqualified from its status as an RLP pursuant to proposed Rule 107C(g), the Exchange would not reassign the appellant's securities to a different RLP until the RLP Panel has informed the appellant of its ruling.

overturn or modify an action taken by the Exchange and all determinations by the RLP Panel would constitute final action by the Exchange on the matter at issue.

Retail Liquidity Identifier

Under proposed NYSE Rule 107C(j), the Exchange proposes to disseminate an identifier through proprietary Exchange data feeds when RPI interest priced at least \$0.001 better than the PBB or PBO for a particular security is available in Exchange systems (“Retail Liquidity Identifier”). The Retail Liquidity Identifier would not be disseminated to the Consolidated Quote Stream.

Retail Order Designations

Under proposed NYSE Rule 107C(k), an RMO can designate how a Retail Order would interact with available contra-side interest as follows. As proposed, a Type 1-designated Retail Order would interact only with available contra-side Retail Price Improvement Orders and would not interact with other available contra-side interest in Exchange systems or route to other markets. The portion of a Type 1-designated Retail Order that does not execute against contra-side Retail Price Improvement Orders would be immediately and automatically cancelled. A Type 2-designated Retail Order would interact first with available contra-side Retail Price Improvement Orders and any remaining portion of the Retail Order would be executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to Rule 13. Accordingly, a Type 2-designated Retail Order could interact with other interest in Exchange systems, but would not route to other markets. A Type 3-designated Retail Order would interact first with available contra-side Retail Price Improvement Orders and any remaining portion of the Retail Order would be executed as an NYSE Immediate or Cancel Order pursuant to Rule 13.

Accordingly, a Type 3-designated Retail Order could interact with other interest in Exchange systems and, if necessary, would route to other markets in compliance with Regulation NMS.

Priority and Order Allocation

Under proposed NYSE Rule 107C(1), the Exchange proposes that competing Retail Price Improvement Orders in the same security would be ranked and allocated according to price then time of entry into Exchange systems. The Exchange further proposes that executions would occur at the price level that completes the incoming order's execution. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders if such interest is at an eligible price. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with proposed Rule 107C(k). The following example illustrates this proposed method:

PBBO for security ABC is \$10.00 – \$10.05

RLP 1 enters a Retail Price Improvement Order to buy ABC at \$10.01 for 500

RLP 2 then enters a Retail Price Improvement Order to buy ABC at \$10.02 for 500

RLP 3 then enters a Retail Price Improvement Order to buy ABC at \$10.03 for 500

An incoming Retail Order to sell ABC for 1,000 would execute first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 500, because it is the next best priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order executes at the price that completes the order's execution. In this example the entire 1,000 order to sell would execute at \$10.02 because it would result in a complete fill.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at \$10.02 was for 100. The incoming Retail Order to sell 1,000 would execute first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 100, because it is the next best priced bid. RLP 1 would then receive an execution for 400 of its bid for 500, at which point the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order executes at the price that completes the order's execution, which is \$10.01.

Implementation

The Exchange proposes that all NYSE-listed and NYSE Amex Equities traded securities would be eligible for inclusion in the Retail Liquidity Program.¹³ In order to provide for an efficient implementation, the Retail Liquidity Program would initially cover only a certain specified list of NYSE-listed securities to which RLPs are assigned, as announced by the Exchange via Information Memo. The Exchange anticipates that the securities included within the Retail Liquidity Program would be expanded periodically as demand for RLP assignments develops in response to increased Retail Order activity on the Exchange.¹⁴

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities

¹³ NYSE Amex LLC is filing a companion rule proposal to adopt NYSE Amex Equities Rule 107C. *See* SR-NYSEAmex-2011-84. "NYSE Amex Equities traded securities" refers to all securities available to be traded on NYSE Amex Equities, including but not limited to NYSE Amex-listed securities as well as those listed on the Nasdaq Stock Market traded pursuant to unlisted trading privileges. *See* Securities Exchange Act Release 34-62479, 75 Fed. Reg. 41264 (July 15, 2010).

¹⁴ The Exchange would announce any such expansions via Information Memo.

Exchange Act of 1934 (the “Act”),¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.¹⁷ The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market.

The Exchange understands that Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

differentiate between customers based on the nature and profitability of their business.

While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The differentiation proposed herein by the Exchange is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors. The Exchange recognizes that sub-penny trading and pricing could potentially result in undesirable market behavior. The Exchange will monitor the Program in an effort to identify and address any such behavior.

Finally, the Exchange proposes that the Commission approve the proposed rule for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 107C. The Program shall expire on [Date will be determined upon adoption of Rule 107C]. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2011-55 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-2011-55. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. 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-2011-55 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underlined

Deletions [bracketed]

Rule 107C. Retail Liquidity Program**(a) Definitions.**

(1) Retail Liquidity Provider. A “Retail Liquidity Provider” or “RLP” is a member organization that is approved by the Exchange under this Rule to act as such and that is required to submit Retail Price Improvement in accordance with this Rule.

(2) Retail Member Organization. A “Retail Member Organization” or “RMO” is a member organization (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders.

(3) Retail Order. A “Retail Order” is:

(A) an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology; or

(B) a proprietary order of a Retail Member Organization that results from liquidating a position acquired from the internalization of an order that satisfies the requirements of subparagraph (a)(3)(A) above.

A Retail Order is an Immediate or Cancel Order and shall operate in accordance with Rule 107C(k).

(4) Retail Price Improvement Order. A “Retail Price Improvement Order” or “RPI” consists of non-displayed interest in NYSE-listed securities that is priced better than the best protected bid (“PBB”) or best protected offer (“PBO”), as such terms are defined in Regulation NMS Rule 600(b)(57), by at least \$0.001 and that is identified as such. Exchange systems will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders. An RPI remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RLP shall only enter an RPI for securities to which it is assigned as RLP. Member organizations other than RLPs are permitted, but not required, to submit RPIs.

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a member organization must conduct a retail business or handle retail orders on behalf of another broker-dealer.

(2) To become a Retail Member Organization, a member organization must submit:

(A) an application form;

(B) supporting documentation, which may include sample marketing literature, Web site screenshots, other publicly disclosed materials describing the member organization's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by the Exchange, that any order submitted as a Retail Order will qualify as such under this Rule.

(3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange shall notify the applicant of its decision in writing.

(4) A disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (i) below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by the Exchange.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to the Exchange.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the member organization to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance

with the requirements of this Rule; and (ii) monitor whether its broker-dealer customer's Retail Order flow meets the applicable requirements.

(c) RLP Qualifications. To qualify as an RLP, a member organization must:

(1) be approved to act as a Designated Market Maker or Supplemental Liquidity Provider;

(2) demonstrate an ability to meet the requirements of an RLP;

(3) have mnemonics or the ability to accommodate other Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities. A member organization may not use such mnemonic or designation for non-RLP trading activity at the Exchange. A member organization shall not receive credit for its RLP trading activity for which it does not use its mnemonic or designation; and

(4) have adequate trading infrastructure and technology to support electronic trading.

(d) RLP Application.

(1) To become an RLP, a member organization must submit an RLP application form with all supporting documentation to the Exchange.

(2) After an applicant submits an RLP application form with supporting documentation to the Exchange, the Exchange shall notify the applicant of its decision. The Exchange may approve one or more member organizations to act as an RLP for a particular security. The Exchange may also approve a particular member organization to act as RLP for one or more securities. Approved RLPs may be assigned securities according to requests made to, and approved by, the Exchange.

(3) If an applicant is approved by the Exchange to receive RLP status, such applicant must establish connectivity with relevant Exchange systems before such applicant is permitted to trade as an RLP on the Exchange.

(4) If an applicant is disapproved under this paragraph (d) by the Exchange, the Exchange shall provide written notice of its disapproval. The disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (i) below; and/or (B) reapply for RLP status 90 days after the disapproval notice is issued by the Exchange.

(e) Voluntary Withdrawal of RLP Status. An RLP may withdraw from its status as an RLP by giving notice to the Exchange. Such withdrawal shall become effective when those securities assigned to the withdrawing RLP are reassigned to another RLP. After the Exchange receives the notice of withdrawal from the withdrawing RLP, the Exchange shall reassign such securities as soon as practicable, but no later than 30 days after the date said notice is received by the Exchange. In the event the reassignment of securities takes longer than the 30-day period, the withdrawing RLP shall have no obligations under this Rule 107C and shall not be held responsible for any matters concerning its previously assigned RLP securities upon termination of this 30-day period.

(f) RLP Requirements.

(1) An RLP may only enter a Retail Price Improvement Order electronically and directly into Exchange systems and facilities designated for this purpose and only for the securities to which it is assigned as RLP. An RLP must maintain:

(A) a Retail Price Improvement Order that is better than the PBB at least five percent of the trading day for each assigned security; and

(B) a Retail Price Improvement Order that is better than the PBO at least five percent of the trading day for each assigned security.

(2) An RLP's five-percent requirements are calculated by determining the average percentage of time an RLP maintains a Retail Price Improvement Order in each of its RLP securities during the regular trading day on a daily and monthly basis. The Exchange shall determine whether an RLP has met this requirement by calculating the following:

(A) the "Daily Bid Percentage" is calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;

(B) the "Daily Offer Percentage" is calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;

(C) the "Monthly Average Bid Percentage" is calculated for each RLP security by summing the security's "Daily Bid Percentages" for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and

(D) the "Monthly Average Offer Percentage" is calculated for each RLP security by summing the security's "Daily Offer Percentage" for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.

(E) Only Retail Price Improvement Orders entered throughout the trading day shall be used when calculating whether an RLP is in compliance with its five-percent requirements.

(3) The five-percent requirement shall not be applicable in the first two calendar months a member organization operates as an RLP. The requirement shall take effect on the first day of the third consecutive calendar month the member organization operates as an RLP.

(g) Failure of RLP to Meet Requirements.

(1) If, after the first two months an RLP acts as an RLP, an RLP fails to meet any of the requirements set forth in paragraph (f) of this Rule for any assigned RLP security for three consecutive months, the Exchange may, in its discretion, take one or more of the following actions:

(A) revoke the assignment of any or all of the affected securities from the RLP;

(B) revoke the assignment of unaffected securities from the RLP; or

(C) disqualify the member organization from its status as an RLP.

(2) Disqualification Determinations. The Exchange shall determine if and when a member organization is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange shall notify an RLP of such impending disqualification in writing. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the member organization.

(3) Appeal and/or Reapplication for RLP Status. An RLP that is disqualified under this paragraph (g) may: (A) appeal such disqualification as provided in paragraph (i) below; and/or (B) reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.

(h) Failure of RMO to Abide by Retail Order Requirements.

(1) If a Retail Member Organization designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify a member organization from its status as a Retail Member Organization.

(2) Disqualification Determinations. The Exchange shall determine if and when a member organization is disqualified from its status as a Retail Member

Organization. When disqualification determinations are made, the Exchange shall provide a written disqualification notice to the member organization.

(3) Appeal and/or Reapplication for Retail Member Organization Status. A Retail Member Organization that is disqualified under this paragraph (h) may: (A) appeal such disqualification as provided in paragraph (i) below; and/or (B) reapply for Retail Member Organization status 90 days after the date of the disqualification notice from the Exchange.

(i) Appeal of Disapproval or Disqualification.

(1) If a member organization disputes the Exchange's decision to disapprove it under Rule 107C(b) or (d) or disqualify it under Rule 107C(g) or (h), the member organization ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Liquidity Program Panel ("RLP Panel") review the decision to determine if it was correct.

(A) In the event a member organization is disqualified from its status as an RLP pursuant to paragraph (g) of this Rule, the Exchange shall not reassign the appellant's securities to a different RLP until the RLP Panel has informed the appellant of its ruling.

(2) The RLP Panel shall consist of the NYSE's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution.

(3) The RLP Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(4) The RLP Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RLP Panel shall constitute final action by the Exchange.

(j) Retail Liquidity Identifier. An identifier shall be disseminated through proprietary data feeds when RPI interest priced at least \$0.001 better than the PBB or PBO for a particular security is available in Exchange systems ("Retail Liquidity Identifier"). The Retail Liquidity Identifier shall not be disseminated to the Consolidated Quote Stream.

(k) Retail Order Designation. A Retail Member Organization can designate how a Retail Order will interact with available contra-side interest as follows:

(1) Type 1. A Type 1-designated Retail Order will interact only with available contra-side Retail Price Improvement Orders and will not interact with other available contra-side interest in Exchange systems or route to other markets. The portion of a Type 1-designated Retail Order that does not execute against contra-

side Retail Price Improvement Orders will be immediately and automatically cancelled.

(2) Type 2. A Type 2-designated Retail Order will interact first with available contra-side Retail Price Improvement Orders and any remaining portion of the Retail Order will be executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to Rule 13.

(3) Type 3. A Type 3-designated Retail Order will interact first with available contra-side Retail Price Improvement Orders and any remaining portion of the Retail Order will be executed as an NYSE Immediate or Cancel Order pursuant to Rule 13.

(l) Priority and Order Allocation.

Retail Price Improvement Orders in the same security shall be ranked and allocated according to price then time of entry into Exchange systems. Executions shall occur at the price level that completes the incoming order's execution. Any remaining unexecuted RPI interest will remain available to interact with other incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with Rule 107C(k).

Examples of priority and order allocation are as follows:

PBBO for security ABC is \$10.00 – \$10.05

RLP 1 enters a Retail Price Improvement Order to buy ABC at \$10.01 for 500
RLP 2 then enters a Retail Price Improvement Order to buy ABC at \$10.02 for 500

RLP 3 then enters a Retail Price Improvement Order to buy ABC at \$10.03 for 500

An incoming Retail Order to sell ABC for 1,000 executes first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 500, because it is the next best priced bid. RLP 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes at the price that completes the order's execution. In this example, the entire 1,000 Retail Order to sell executes at \$10.02 because it results in a complete fill.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at \$10.02 is for 100. The incoming Retail Order to sell 1,000 executes first against RLP 3's bid for 500, because it is the best priced bid, then against RLP 2's bid for 100, because it is the next best priced bid. RLP 1 then receives an execution for 400 of its bid for 500, at which point the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes at the price that completes the order's execution, which is \$10.01.

(m) Rule Pilot Program. This rule shall operate for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 107C. The Program shall expire on [Date will be determined upon adoption of Rule 107C].