SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58970; File No. SR-NYSE-2008-120)

November 17, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, LLC Relating to the Limited Liability Company Agreement of New York Block Exchange, a Facility of NYSE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 under the Exchange Act,[2] notice is hereby given that, on November 14, 2008, New York Stock Exchange, LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or "SEC") 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

NYSE, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the "Proposed Rule Change") to the Commission in connection with the proposed formation of a joint venture between the Exchange and BIDS Holdings L.P., a Delaware limited partnership ("BIDS"). The Exchange proposes to establish a new electronic trading facility, the New York Block Exchange ("NYBX"), as a facility, as that term is defined in Section 3(a)(2) of the Exchange Act, of the Exchange. NYBX will be an electronic facility of the Exchange that will provide for the continuous matching and execution of securities listed on the NYSE of all non-displayed orders

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

with the aggregate of all displayed and non-displayed orders of the NYSE Display Book® ("Display Book" or "DBK") and considers protected quotations of all automated trading centers. The terms "protected quotations" and "automated trading centers" will have the same meanings as defined in Rule 600 of Regulation NMS. NYBX would be owned and operated by New York Block Exchange LLC (the "Company"), a Delaware limited liability company formed and jointly owned by the Exchange and BIDS. In this Proposed Rule Change, the proposed Limited Liability Company Agreement of the Company (the "LLC Agreement") is attached as Exhibit 5A. Proposed Rule 2B, commentary .01, is attached as Exhibit 5B. The LLC Agreement of the Company is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation.

The text of the proposed rule change is available at www.nyse.com, NYSE's principal office, and the Commission's Public Reference Room.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed formation of a joint venture between the Exchange and BIDS. The Exchange

proposes to establish a new electronic trading facility, called NYBX (the "Facility"), as a facility (as that term is defined in Section 3(a)(2) of the Exchange Act) of the Exchange. NYBX will be an electronic facility of the Exchange that will provide for the continuous matching and execution of securities listed on the NYSE of all non-displayed orders with the aggregate of all displayed and non-displayed orders of the Display Book and considers protected quotations of all automated trading centers. NYBX would be owned and operated by the Company, a Delaware limited liability company formed and jointly owned by the Exchange and BIDS. BIDS will become an NYSE member in connection with the establishment of the facility. In addition to its ownership stake in the Company, the Exchange will enter into a services agreement with the Company (the "Services Agreement") pursuant to which the Exchange will perform certain financial, operational, information technology and development services for the Company. An affiliate of the Exchange, NYSE Market, Inc., is also an equity investor in BIDS.

The LLC Agreement is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation. The Exchange is submitting a separate filing to establish rules relating to trading on NYBX.

Structure of the Company

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company ("Interests"). The holders of Interests are referred to as the members of the Company (the "Members"). The Interests represent equity interests in the Company and entitle the holders thereof to participate in the Company's allocations and distributions. Currently, the Exchange and BIDS each own 50% of the Interests.

Term and Termination

Pursuant to Section 1.6 of the LLC Agreement, the Company will have an initial term of three years from the date the LLC Agreement is entered into (the "Effective Date"), with automatic one year renewal terms unless a Member elects to dissolve the Company within thirty days prior to the end of a term. In addition, Section 10.2(a) of the LLC Agreement provides that the Company may be dissolved upon the first to occur of the following: (i) if a Member does not make its pro rata share of capital contributions to the Company under certain circumstances; (ii) if the Members jointly agree to dissolve the Company; (iii) the determination by BIDS to dissolve the Company if the Exchange or any of its Affiliates enters into any agreement or arrangement with respect to a joint venture, licensing, partnership or other similar strategic agreement with, or acquiring equity representing an equal or greater percentage than the aggregate investment by the Exchange in BIDS of, any U.S. registered alternative trading system, as defined in Rule 300 of the Exchange Act ("ATS"), that executes block trades or that does not display its liquidity or orders to its subscribers or other users of the ATS; (iv) the determination of the Exchange to dissolve the Company if BIDS or any of its Affiliates enters into any agreement or arrangement with respect to a joint venture, licensing, partnership or other similar strategic agreement with, or receiving an equity investment representing an equal or greater percentage than the Exchange's investment in BIDS from, any U.S. or European contract market or securities exchange other than the Exchange or its Affiliates or any ATS that executed 10% or more of the securities in the relevant class of securities traded in the preceding quarter in the U.S.; (v) the delivery by either Member of written notice to the Company and the other Member of its determination to dissolve the Company for cause, including for an uncured material breach of the LLC Agreement, bankruptcy of the other Member or a material change in

the relevant regulatory regime that frustrates the business of the Company; (vi) the delivery by any Member of written notice to the Company and the other Member of its determination to exercise the SRO Termination Right (as defined below in "Regulation of the Company"); or (vii) the occurrence of any other event that would make it unlawful for the business of the Company to be continued.

Upon expiration of the term or the occurrence of any of the events set forth in Section 10.2(a) of the Agreement, the Company will be dissolved and terminated in accordance with the provisions of Article 10 of the LLC Agreement, including provisions for certain transition services by the Members in order for NYBX to continue to operate and to permit an orderly transition or cessation of the operation of NYBX.

Governance of the Company

Section 8.3 of the LLC Agreement establishes a board of directors of the Company (the "Board of Directors") to manage the business and affairs of the Company. Section 8.1(a) of the LLC Agreement provides that, subject to the limitations in the LLC Agreement and except as otherwise specifically contemplated by the LLC Agreement, the Board of Directors has exclusive and complete authority and discretion to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company, and in carrying out his or her duties hereunder, each member of the Board of Directors shall (x) comply with the federal securities laws and the rules and regulations promulgated thereunder and (y) cooperate with NYSE LLC pursuant to its regulatory authority and the provisions of the LLC Agreement and with the SEC. Section 8.1(b) of the LLC Agreement provides that the Board of Directors shall delegate the day-to-day operations of the Company and the development of NYBX to the Exchange pursuant to the Services Agreement.

Section 8.3 of the LLC Agreement provides that the Board of Directors will consist of four directors, comprised of two individuals designated by the Exchange (each, a "NYSE Director") and two individuals designated by BIDS (each, a "BIDS Director"). Any individual designated to the Board of Directors by a Member must be reasonably acceptable to the other Member and may not be subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act). Any director who becomes subject to any such statutory disqualification shall be deemed to have automatically resigned from the Board of Directors.

Generally, under Section 8.3(f), the entire Board of Directors, either present or represented by proxy, shall constitute a quorum for the transaction of business. If such a quorum is not present within sixty (60) minutes after the time appointed for any meeting, the meeting shall be adjourned and the directors present either in person or represented by proxy at such meeting shall reschedule the meeting to occur within five (5) Business Days. If a director who was not present at the initial meeting is not present either in person or represented by proxy at the rescheduled meeting, then (i) the Member represented by such director shall promptly appoint an alternate director reasonably acceptable to the other Member and (ii) the rescheduled meeting shall be adjourned and the directors present either in person or represented by proxy at such meeting shall reschedule the meeting to occur within three (3) Business Days. If such alternate director is not present in person or represented by proxy at such second rescheduled meeting, then, except as set forth in the following sentence, three (3) directors, either present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the event of a meeting of the Board of Directors solely with respect to the business of suspending or terminating a Member's voting privileges or membership under Section 7.1(b), the presence of

the directors designated by the Member subject to sanction shall not be required in order to constitute a quorum to transact such business and in such event less than three (3) directors, either present in person or represented by proxy, may constitute a quorum for the transaction of such business as long as all directors designated by the Member not subject to sanction are present. Written notice of any rescheduled meeting shall be delivered to all directors at least one (1) Business Day prior to the date of such rescheduled meeting. Each Member shall direct, and shall use its reasonable best efforts to cause, each director designated by it to attend all meetings of the Board of Directors and, in the event such director is unable to attend a meeting, to cause such director to authorize a person or persons to act for him or her by proxy in accordance with Section 8.3(h). Each Member shall take all necessary actions, to the fullest extent permitted by law, to ensure that the directors designated by such Member vote on all matters.

Pursuant to Section 8.3(g), except as provided in the first sentence of Section 3.1(c) of the LLC Agreement the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, so long as such vote includes the vote of at least one NYSE Director and one BIDS Director. Specifically, a vote of the majority of the Board of Directors will be required to cause or permit the Company or any of its subsidiaries to do or take any action that would materially impact the Company, the ownership or use of the Company's intellectual property and the rights of the Members, including without limitation a merger of the Company, selling the Company's assets, amending the LLC Agreement or other governance documents, acquiring or issuing securities of the Company, entering new lines of business, licensing intellectual property, making distributions to Members, incurring debt, filing for bankruptcy, approving and materially amending the Company's annual budget or operating

plan, or taking any action that would impact the Company's regulatory status. The LLC Agreement does not provide for a third party deadlock provision.

If such alternate director is not present in person or represented by proxy at such second rescheduled meeting, then, except as set forth in the following sentence, three (3) directors, either present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the event of a meeting of the Board of Directors solely with respect to the business of suspending or terminating a Member's voting privileges or membership under Section 7.1(b), the presence of the directors designated by the Member subject to sanction shall not be required in order to constitute a quorum to transact such business and in such event less than three (3) directors, either present in person or represented by proxy, may constitute a quorum for the transaction of such business as long as all directors designated by the Member not subject to sanction are present. Written notice of any rescheduled meeting shall be delivered to all directors at least one (1) Business Day prior to the date of such rescheduled meeting. Each Member shall direct, and shall use its reasonable best efforts to cause, each director designated by it to attend all meetings of the Board of Directors and, in the event such director is unable to attend a meeting, to cause such director to authorize a person or persons to act for him or her by proxy in accordance with Section 8.3(h). Each Member shall take all necessary actions, to the fullest extent permitted by law, to ensure that the directors designated by such Member vote on all matters.

Section 8.3(c) of the LLC Agreement provides that a director may only be removed (with or without cause) by the Member who designated such director; provided that any director (regardless of who designated such director) may be removed for cause by a majority vote of the

other members of the Board of Directors voting at a meeting duly convened, so long as such majority includes at least one NYSE Director and one BIDS Director.

Under Section 8.1(d) of the LLC Agreement, the Board of Directors and each director agrees to comply with the federal securities laws and the rules and regulations promulgated thereunder and to cooperate with the Exchange pursuant to its regulatory authority and with the Commission. Furthermore, each director shall take into consideration whether his or her actions would cause the Facility or the Company to (i) engage in conduct that fosters and does not interfere with the ability of the Exchange or the Company to carry out their respective responsibilities under the Exchange Act and to prevent fraudulent and manipulative acts and practices, (ii) promote just and equitable principles of trade, (iii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, (iv) remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and (v) in general, protect investors and the public interest.

Section 8.1(e) of the LLC Agreement provides that NYSE Regulation (as defined below) must receive notice of planned or proposed changes to the Company (not including changes relating solely to Non-Market Matters) or the Facility and that such changes may only be implemented if NYSE Regulation does not object affirmatively to such changes prior to implementation. If NYSE Regulation, in its sole discretion, determines that such planned or proposed changes to the Company or the Facility could cause a Regulatory Deficiency if implemented, NYSE Regulation may direct the Company to modify the proposal as necessary to ensure that it does not cause a Regulatory Deficiency, in which case the Company will, prior to implementation, modify the proposal such that NYSE Regulation does not object to the planned

or proposed changes. In the event that NYSE Regulation, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, NYSE Regulation may direct the Company to undertake such modifications to the Company (but not to include Non-Market Matters) or the Facility as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow NYSE Regulation to perform and fulfill its regulatory responsibilities under the Exchange Act.

Under Section 8.9 of the LLC Agreement, the Company may, at the discretion of the Board of Directors, issue additional Interests to any person for any amount of consideration, if any, as determined by the Board of Directors and admit any such persons as an additional Member; provided, that such additional Member will automatically be bound by all of the terms and conditions of the LLC Agreement applicable to Members and that such additional Member executes the documentation required by the Board of Directors pursuant to which such additional Member agrees to be bound by the terms and provisions of the LLC Agreement.

Capital Contributions and Distributions

Section 3.1(a) of the LLC Agreement provides that at the Effective Date, each Member will make a cash capital contribution to the Company. Section 3.1(c) of the LLC Agreement provides that, except as otherwise required by law, no Member shall be required, or permitted, to make any additional capital contributions to the Company without the unanimous consent of the Board of Directors. If and when NYSE Regulation notifies the Company that actions are required by the Company in order for the Company to maintain its status as an operator of a facility of a self-regulatory organization pursuant to the Exchange Act, then the Company will determine the cost of such actions and the Board of Directors will direct the Members to make, on a pro rata basis, a capital contribution to the Company equal to the amount required for the

Company to maintain such status. Each Member will make its pro rata share of any capital contribution requested by the Board of Directors promptly following its receipt of such request; provided, that each Member will have no obligation to make its pro rata share of the capital contribution requested pursuant to the preceding sentence if, after giving effect to such capital contribution, the aggregate amount of all capital contributions made by the Members pursuant to the preceding sentence during the three year period ending on the date of such determination would exceed $1,000,000. If a Member does not make its pro rata share of such capital contribution in accordance with the preceding sentence, then either Member may cause the Company to dissolve in accordance with the provisions of the LLC Agreement.

Pursuant to Section 4.1 of the LLC Agreement, gain from the sale of assets of the Company will be allocated 50% to each member and operating income will be allocated in the same manner as gain unless the Board of Directors unanimously determines that a different allocation or operating income is appropriate.

Section 5.1 of the LLC Agreement provides that, to the extent available for distribution, cash of the Company will generally be distributed 50% to each Member unless the Board of Directors has determined that the Members should be allocated operating income in differing percentages, in which case cash will be distributed in a manner that reflects such differing percentages as determined by the Board of Directors.

Intellectual Property

Pursuant to an intellectual property license to be entered into on the Effective Date by and among the Company, the Exchange and BIDS (the "IP License"), each of the Exchange and BIDS will provide to the Company a non-exclusive license for the use of certain of its intellectual property and the Company will provide to each Member a non-exclusive license

(exercisable only upon certain events) for the use of the intellectual property owned by the Company.

The LLC Agreement and the IP License provide that the Company will own intellectual property which is (i) developed for NYBX by a third party by or on behalf of the Company, (ii) expressly conveyed or contributed by any of the Members to the Company and all derivatives, improvements or enhancements thereto, or (iii) not in existence as of the Effective Date that is developed by any person explicitly for the use of NYBX and designated as such in writing during the development process and all derivatives, improvements or enhancements thereto; provided, that if such intellectual property is a derivative, improvement or enhancement to intellectual property owned by a Member, it shall only be owned by the Company if it is explicitly for the use of NYBX and designated as such in writing during the development process.

Non-Compete

Section 7.4 of the LLC Agreement provides that during the period commencing on the Effective Date and continuing until the earlier of (x) the one year anniversary of the Effective Date and (y) the first day on which NYBX is available for use by the members of any one or more the U.S. self-regulatory organizations operated by NYSE Euronext (the "NYSE Markets") for trading as a facility approved by the Commission (the "Non-Competition Period"), neither Member shall, and each Member shall cause its Affiliates not to, directly or indirectly compete with, or enter into any agreement with any other person that calls for such Member or its Affiliates to enter into any equity investment, joint venture, licensing or partnership that competes with, the business of the Company anywhere in the United States. The Non-Competition Period will be automatically extended for successive six month periods unless a

Member gives the other Member written notice of its intention to terminate the Non-Competition Period at least six months prior to the end of the then current Non-Competition Period as so extended from time to time. Notwithstanding the foregoing, each Member and its Affiliates may (i) provide services to any other person that is not engaged in any business that is competitive with the business of the Company; (ii) own less than 5% of the issued and outstanding equity of any entity (so long as such Member or Affiliate does not control or participate in the management of such entity); (iii) take any action that may be necessary for it or its Affiliates to remain in compliance with applicable laws, rules or regulations; and (iv) continue to engage in any of its existing businesses.

Changes in Ownership of the Company

Section 9.1 of the LLC Agreement provides that each Members may not sell, assign, pledge or in any manner dispose of or create or suffer the creation of a security interest in or any encumbrance on all or a portion of its Interest in the Company (the commission of any such act being referred to as a "Transfer"), except in accordance with the terms and conditions set forth in the LLC Agreement. Section 9.2 of the LLC Agreement permits a Member to Transfer all or any portion of its Interest to (i) a Permitted Transferee or (ii) a person that is not a Permitted Transferee with the consent of the other Member, subject to the satisfaction of the requirements set forth in Sections 9.3 and 9.8 of the LLC Agreement (described below), and provides that the transferee of all or any portion of a Member's Interest may be admitted to the Company as a Member upon the prior written consent of the Board of Directors.

Section 9.3 of the LLC Agreement prohibits the Transfer of all or any portion of an Interest in the Company unless: (i) the transferor pays all reasonable costs and expenses incurred by the Company in connection with the Transfer; (ii) the transferor delivers to the Company a

fully executed copy of all documents relating to the Transfer and the agreement of the transferee in writing and otherwise in form and substance acceptable to the Board of Directors to be bound by the terms imposed upon such Transfer by the Board of Directors and by the terms of the LLC Agreement and to assume all obligations of the transferor under the LLC Agreement relating to the Interest that is the subject of such Transfer; (iii) the Board of Directors is reasonably satisfied that the Transfer will not (A) cause the Company to be treated as an association taxable as a corporation for federal income tax purposes, (B) cause the Company to be treated as a "publicly traded partnership" within the meaning of the Internal Revenue Code of 1986, as amended from time to time (the "Code"), (C) violate any federal, state or non-United States securities laws, rules or regulations, (D) cause some or all of the assets of the Company to be "plan assets" or the investment activity of the Company to constitute "prohibited transactions" under ERISA or the Code, and (E) cause the Company to be an investment company required to be registered under the Investment Company Act of 1940, as amended. Under Section 9.1 of the LLC Agreement, any Transfer or purported Transfer of an Interest not made in accordance with the LLC Agreement will be null and void and of no force or effect whatsoever.

Section 9.8(a) of the LLC Agreement provides that beginning after Commission approval of this proposed rule change, the Company must provide the Commission with written notice ten days prior to the closing date of any acquisition of an Interest by a person that results in a Member's percentage ownership interest in the Company, alone or together with any Related Person of such Member, meeting or crossing either the 5%, 10%, or 15% thresholds.

Section 9.8(b) of the LLC Agreement provides that beginning after Commission approval of this proposed rule change, no person that is not a Member as of the Effective Date, either alone or together with its Related Persons, may directly own an Interest that would result in such

person having a percentage ownership interest exceeding 20% (the "Concentration Limitation"); provided, however, that the Concentration Limitation shall not apply to the Exchange. The Concentration Limitation shall apply to each person (other than the Exchange) unless and until: (i) such person shall have delivered to the Board of Directors a notice in writing, not less than 45 days (or such shorter period as the Board of Directors expressly consents to) prior to the acquisition of any Interest that would cause such person (either alone or together with its Related Persons) to exceed the Concentration Limitation, of such person's intention to acquire such Interest; (ii) such notice shall have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder; and (iii) the Board of Directors shall not have determined to oppose such person's acquisition of such Interest. The Board of Directors shall oppose such person's acquisition of such Interest if the Board of Directors determines, in its sole discretion, that (A) such ownership by such person, either alone or together with its Related Persons, will impair the ability of the Company and the Board of Directors to carry out its functions and responsibilities, including but not limited to, under the Exchange Act, or is otherwise not in the best interests of the Company; (B) such ownership by such person, either alone or together with its Related Persons, will impair the ability of the Commission to enforce the Exchange Act; (C) such person or its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act); or (D) if such Interest would result in the person having an ownership interest in the Company exceeding the Concentration Limitation, either such person or one of its Related Persons is a "member" or "member organization" of the Exchange (as defined in the rules of the Exchange, as such rules may be in effect from time to time). In making a determination pursuant to the foregoing, the Board of Directors may impose such conditions and

restrictions on such person and its Related Persons as the Board of Directors may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Company.

Section 9.8(c) of the LLC Agreement provides that beginning after Commission approval of this proposed rule change, the Exchange's percentage ownership interest shall not decline below 50% unless and until: (i) the Exchange shall have delivered to the Board of Directors a notice in writing, not less than 45 days (or such shorter period as the Board of Directors shall expressly consent to) prior to the Transfer of any Interest that would result in the Exchange (either alone or together with its Related Persons) holding less than a 50% ownership interest in the Company, of the Exchange's intention to Transfer such Interest; and (ii) such notice shall have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder.

Section 9.8(d) of the LLC Agreement provides for indirect changes in control of the Company. Any person that acquires a controlling interest (i.e., an interest of 25% or more of the total voting power) in a Member who, alone or together with any Related Person of such Member, holds a Percentage Interest in the Company equal to or greater than 20% would be required to agree to become a party to the LLC Agreement and abide by its terms. The amendment to the LLC Agreement caused by the addition of the indirect controlling party would trigger a proposed rule change that the Exchange would have to file with the Commission pursuant to Section 19(b) of the Exchange Act. The non-economic rights and privileges, including all voting rights, of the Member in which such controlling interest is acquired would be suspended until this proposed rule change becomes effective under the Exchange Act or until the indirect controlling party ceases to have a controlling interest in such Member.

Trading Volume Limitations

Section 9.9 of the LLC Agreement provides that if (i) during at least 4 of the then preceding 6 calendar months, the average daily trading volume in the Facility exceeds 10% of the aggregate average daily trading volume of the Exchange (The aggregate average daily trading volume in the Facility shall be calculated based upon the trading volume of the Facility itself combined with trading volume in the NYSE Display Book® ("Display Book") that originated in the Facility, if any) and (ii) a Member (other than the Exchange), either alone or together with its Related Persons owns Interests resulting in a percentage ownership interest exceeding the Concentration Limitation, then if such Member elects not to Transfer sufficient Interests within 180 days after the date on which both the conditions in clauses (i) and (ii) are satisfied so that such Member does not exceed the Concentration Limitation, an independent third party SRO engaged by the Company shall begin, within such 180-day period, to conduct market surveillance of such Member with respect to such Member's trading activity in both the Facility and in NYSE LLC, such that no Transfer in respect of the Concentration Limitation set forth in this Section 9.9 will be required under applicable law or regulation.

Regulation of the Company

Under Section 8.1(c) of the LLC Agreement, the Members acknowledge and agree that NYSE Regulation, Inc., an independent, not-for-profit subsidiary of the Exchange, together with its successors ("NYSE Regulation"), will have regulatory responsibility for the activities of NYBX and will perform all actions related thereto, including without limitation the following actions: (i) the adoption, amendment and interpretation of policies arising out of and regarding any statement made generally available to the membership of the Exchange, to persons having or seeking access to NYBX or to a group or category of such persons that establishes or changes

any standard, limit or guideline with respect to (A) the rights, obligations or privileges of such persons or group or category of persons or (B) the meaning, administration or enforcement of any new or existing rule or policy of NYBX, including any exemption from such rule or policy; (ii) adoption, amendment and interpretation of policies and rules relating to and regarding the regulation of NYBX and approval of rule filings related to NYBX prior to filing with the Commission; (iii) securities regulation, record keeping obligations and other matters implicating the self-regulatory organization responsibilities of the Exchange under the Exchange Act; and (iv) real-time market surveillance and trading activity reported to NYBX (collectively, the "SRO Responsibilities").

The Exchange will consult with the Board of Directors with respect to the SRO Responsibilities of NYSE Regulation; provided, however, that to the extent it is impracticable or prohibited by law for the Exchange to consult with the Board of Directors in advance of taking any action as part of its SRO Responsibilities, the Exchange will consult with the Board of Directors or the applicable Member as soon as practicable thereafter. Such consultation will include providing the Board of Directors with the reasonable opportunity to review and comment in advance upon non-routine information relating to NYBX that appears in filings, statements or applications submitted to the Commission or another governmental or regulatory authority on behalf of the Company that are material to ensuring that the Company and NYBX comply with applicable federal securities laws and, to the extent not otherwise prohibited by law, keeping the Board of Directors apprised, on a regular and timely manner, of non-routine notices or orders relating to NYBX received by the Exchange or NYSE Regulation from the Commission or another governmental or regulatory authority. The Board of Directors cannot require the

Exchange to act or fail to act in a manner that the Exchange reasonably believes to be inconsistent with its regulatory obligations.

Section 8.1(c) of the LLC Agreement also provides that should NYSE Regulation (i) exercise its authority in a manner that materially adversely affects the ability of any Member to utilize NYBX in accordance with the LLC Agreement or (ii) require the Company to take any action having a material effect that would otherwise require the approval of the Board of Directors, but which does not receive such approval either prior to or following such action, then (x) in the case of clause (i) above, each Member so adversely affected, and (y) in the case of clause (ii) above, each Member, will have the right to cause the Company to dissolve in accordance with the provisions of the LLC Agreement (the "SRO Termination Right").

Section 7.1(b) of the LLC Agreement provides that, after appropriate notice and opportunity for hearing, the Board of Directors, by a vote of a majority of the directors (excluding the vote of the directors designated by the Member subject to sanction), may suspend or terminate a Member's voting privileges or membership in the event: (i) such Member has materially violated a provision of the LLC Agreement relating to Regulatory Matters or any federal or state securities law; (ii) such Member is subject to any applicable "statutory disqualification" (as defined in Section 3(a)(39) of the Exchange Act); or (iii) such action is necessary or appropriate in the public interest or for the protection of investors. Prior to any such suspension or termination, the Board of Directors will deliver to such Member a written notice specifying in reasonable detail the basis for such proposed suspension or termination.

Section 14.1 of the LLC Agreement generally provides that the Members, the members of the Board of Directors and the Company may not disclose any confidential information of the Company or any Member to any person, except as expressly permitted by the LLC Agreement.

Section 14.1 of the LLC Agreement provides exceptions for, among other things, disclosure required by any applicable law, regulation or legal process or by the rules of any stock exchange, regulatory body or governmental authority, including without limitation any rules and regulations promulgated under the Exchange Act, and disclosure to the SEC or other regulatory body or governmental authority in connection with any necessary regulatory or governmental approval. Furthermore, nothing in the LLC Agreement shall be interpreted to limit or impede the rights of the Commission, the Exchange or NYSE Regulation to access and examine confidential information of the Company pursuant to U.S. federal securities laws, and the rules and regulations promulgated thereunder, or to limit or impede the ability of a member of the Board of Directors, any Member or officer, director, agent or employee of a Member or of the Company to disclose confidential information of the Company to the Commission, the Exchange or NYSE Regulation.

Furthermore, Section 14.1 of the LLC Agreement provides that all confidential information pertaining to the self-regulatory function of the Exchange or the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company will not be made available to any persons other than to those officers, directors, employees and agents of the Company and the Members that have a reasonable need to know the contents thereof, will be retained in confidence by the Company and the Members and their respective officers, directors, employees and agents, and will not be used for any commercial purposes.

Regulatory Jurisdiction Over Members

Under Section 6.1(a) of the LLC Agreement, the Members acknowledge that, to the extent related to the Company's business, the books, records, premises, officers, directors, agents

and employees of the Company and of its Members shall be deemed to be the books, records, premises, officers, directors, agents and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Exchange Act. In addition, the books and records of the Company will be maintained at the principal office of the Company in New York and will be subject at all times to inspection and copying by the Commission and the Exchange at no additional charge to the Commission or the Exchange.

Under Section 6.1(b) of the LLC Agreement, the Company, its Members and the officers, directors, agents and employees of the Company and its Members irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and the Exchange for purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, and the rules and regulations promulgated thereunder, arising out of, or relating to, activities of the Company and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.

Under Section 6.1(c) of the LLC Agreement, the Company, its Members, and the officers, directors, agents, and employees of the Company and its Members agree to comply with the federal securities laws and the rules and regulations promulgated thereunder and to cooperate with the Exchange pursuant to its regulatory authority and the provisions of the LLC Agreement and with the Commission and to engage in conduct that fosters and does not interfere with the Company's and NYSE LLC's ability to (i) prevent fraudulent and manipulative acts and practices; (ii) promote just and equitable principles of trade; (iii) foster cooperation and

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; (iv) remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (v) in general, protect investors and the public interest.

Furthermore, Section 8.1(d) provides that the Company and each Member shall take such action as is necessary to ensure that the Company's and such Member's officers, directors, agents and employees consent in writing to the application to them of the provisions in the LLC Agreement with respect to their activities relating to the Company.

The Exchange believes that these provisions will serve as notice to Members that they will be subject to the jurisdiction of the U.S. federal courts, the Commission and the Exchange. Accordingly, these provisions ensure that, should an occasion arise which requires regulatory cooperation or jurisdictional submission from the Members, it will be forthcoming and uncontested.

Amendments to the LLC Agreement and the Certificate of Formation

Pursuant to Section 13.1 of the LLC Agreement, any amendment to the LLC Agreement which does not adversely affect the right of any Member in any material respect may be made by the Board of Directors without the consent of the Members if such amendment is for the purpose of admitting substituted or additional Members as permitted by the LLC Agreement, necessary to maintain the Company's status as a partnership that is not a "publicly traded partnership" pursuant to the Code, necessary to preserve the validity of any and all allocations of income, gain, loss or deduction pursuant to the Code, or contemplated by the LLC Agreement. Any amendments other than those described in the foregoing sentence require the consent of all Members. If the LLC Agreement is amended, the Board of Directors will amend the Certificate

of Formation to reflect such change if the Board of Directors deems such amendment to be necessary or appropriate.

Furthermore, Section 13.1 of the LLC Agreement provides that for so long as the Company is a facility of the Exchange or of a successor of the Exchange that is a self-regulatory organization, before any amendment or repeal of any provision of the LLC Agreement becomes effective, such amendment or repeal must either (i) be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder or (ii) be submitted to the board of directors of the Exchange or its successor, and if the Exchange's board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal will not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

Relationship of the Exchange to BIDS

On February 25, 2008, NYSE Market, Inc., a Delaware corporation and wholly-owned subsidiary of the Exchange, and BIDS entered into a Contribution Agreement. Pursuant to the Contribution Agreement, NYSE Market, Inc. contributed cash to the capital of BIDS in exchange for limited partnership interests in BIDS representing on the date of such issuance 8.57% of the aggregate limited partnership interests in BIDS (the "Purchased Interests"). The Exchange and its affiliates do not have any voting or other "control" arrangements with any of the other limited partners or general partner of BIDS relating to its investment in BIDS. The purchase by NYSE Market, Inc. of the Purchased Interests was consummated on February 25, 2008. As a result of such purchase, NYSE Market, Inc. became a limited partner of BIDS pursuant to the Amended

and Restated Limited Partnership Agreement of BIDS dated January 31, 2007. The general partner of BIDS is BIDS Holdings GP LLC.

The Exchange proposes that there be an exemption from Rule 2B of the Exchange with respect to the investment by NYSE Market, Inc. in BIDS. In relevant part, Rule 2B provides that, without prior Commission approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange; provided, however, that, if a director of an affiliate of a member organization serves as a director of NYSE Euronext, this fact shall not cause such member organization to be an affiliate of the Exchange, or an affiliate of an affiliate of the Exchange. Upon execution of the LLC Agreement and BIDS' approval as a member organization, the Exchange (through an affiliate) will maintain an ownership interest in a member organization and BIDS will be affiliated with an affiliate of the Exchange, in each case which without Commission approval would be prohibited by Rule 2B. The Commission has also previously noted its concern regarding (i) the potential for conflicts of interest in instances where an exchange is affiliated with one of its members and (ii) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members. As such, the Exchange requests that the Commission approve the relationships between BIDS and the Exchange described above, subject to the conditions and limitations set out below.

In making such a request, the Exchange notes that, consistent with the Exchange's procedures relating to its affiliated outbound router, Archipelago Securities LLC, the Exchange will adopt certain policies and procedures relating to BIDS to mitigate concerns that there are

potential conflicts of interest in instances where a member firm is affiliated with an exchange, including with respect to the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.

The Exchange notes that with respect to its business activities, BIDS, which will become an NYSE member prior to commencement of the Facility, is subject to independent oversight and enforcement by the Financial Industry Regulatory Authority ("FINRA"), an unaffiliated self-regulatory organization ("SRO") that is BIDS'designated examining authority. In this capacity, FINRA is responsible for examining BIDS with respect to its books and records and capital obligations, and shares with NYSE Regulation the responsibility for reviewing BIDS' compliance with intermarket trading rules such as SEC Regulation NMS. In addition, through an agreement between FINRA and the NYSE pursuant to the provisions of SEC Rule 17d-2 under the Exchange Act, FINRA's staff will review for BIDS' compliance with other NYSE rules through FINRA's examination program. NYSE Regulation will, upon commencement of the Facility's operations, monitor BIDS for compliance with NYSE trading rules, subject, of course, to SEC oversight of NYSE Regulation's regulatory program.

In order to alleviate any residual concerns the Commission may have regarding the potential for conflicts of interest, the Exchange notes that NYSE Regulation has agreed with the Exchange that it will collect and maintain the following information of which NYSE Regulation staff becomes aware – namely, all alerts, complaints, investigations and enforcement actions where BIDS (in its capacity as an NYSE member) is identified as having potentially violated NYSE or applicable SEC rules – in an easily accessible manner, so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examinations. NYSE Regulation has further agreed with the Exchange that it will provide a report to the Exchange's Chief

Regulatory Officer, on at least a quarterly basis, which: (i) quantifies all alerts (of which NYSE Regulation is aware in its tracking system) that identify BIDS as having potentially violated NYSE or SEC rules and (ii) quantifies the number of all investigations that identify BIDS as having potentially violated NYSE or SEC rules.

The Exchange is also proposing to amend Exchange Rule 2B by adding commentary .01. As amended, Exchange Rule 2B, commentary .01 will require the implementation of policies and procedures that are reasonably designed to ensure that BIDS Holdings, L.P. and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of BIDS' affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange; provided, however, that BIDS Holdings, L.P. and its affiliates shall be permitted to have access to non-public information relating to the parties' obligations under the LLC Agreement or the relationship of the parties contemplated by the LLC Agreement, and such non-public information shall be kept confidential in accordance with Section 14.1 of the LLC Agreement, including the requirement that such non-public information shall not be made available to any Persons other than to those officers, directors, employees and agents of the Company and the Members that have a reasonable need to know the contents thereof. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

Specifically, Exchange Rule 2B, commentary .01 shall provide as follows:

The Exchange and BIDS shall establish and maintain procedures and internal controls reasonably designed to ensure that BIDS Holdings, L.P. and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of BIDS' affiliation with the Exchange, until such information is available generally to similarly situated members of the

Exchange; provided, however, that BIDS Holdings, L.P. and its affiliates shall be permitted to have access to non-public information relating to the parties' obligations under the LLC Agreement or the relationship of the parties contemplated by the LLC Agreement, and such non-public information shall be kept confidential in accordance with Section 14.1 of the LLC Agreement, including the requirement that such non-public information shall not be made available to any Persons other than to those officers, directors, employees and agents of the Company and the Members that have a reasonable need to know the contents thereof.

The Exchange believes these measures effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring BIDS vis-à-vis other non-affiliated NYSE members. The Exchange also notes that Section 9.9 of the LLC Agreement will also mitigate these concerns. Section 9.9 of the LLC Agreement provides that if during at least 4 of the then preceding 6 calendar months, the average daily trading volume in the Facility exceeds 10% of the aggregate average daily trading volume of the Exchange, then, within 180 days, either an independent third party SRO engaged by the Company must begin to conduct market surveillance of BIDS with respect to BIDS's trading activity in both the Facility and in NYSE LLC, or BIDS must Transfer sufficient Interests so that BIDS does not exceed the Concentration Limitation.

In addition, the Exchange notes that NYSE Market, Inc. owns less than 9% of the equity in BIDS and therefore does not own a controlling interest in BIDS or otherwise have any veto or other special voting rights with respect to the management or operation of BIDS. The Exchange further notes that the general partner of BIDS, in which the Exchange and its affiliates hold no interests, manages the day-to-day business of BIDS. The Exchange acknowledges that if the Exchange or any of its affiliates were to directly or indirectly increase the equity ownership of

BIDS, such increase would require prior Commission approval. The Exchange believes the foregoing measures and factors minimize the concerns identified by the Commission regarding potential conflicts of interest.

Pilot Period

The Exchange proposes that the Commission authorize the exemption from Rule 2B for a pilot period of one year from the date of the approval of this rule filing. 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.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [3] that an exchange have rules that are 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.

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

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

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

The Exchange has not received any unsolicited written comments from members or other interested parties.

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[3] 15 U.S.C. 78f(b)(5).

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

Within 35 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-2008-120 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2008-120. 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 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 offices 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-2008-120 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.[4]

Florence E. Harmon
Acting Secretary

[4] 17 CFR 200.30-3(a)(12).