SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58969; File No. SR-NYSE-2008-119)

November 17, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock
Exchange LLC to Establish the New York Block Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and

Rule 19b-4 thereunder,[2] notice is hereby given that, on November 13, 2008, 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 to adopt Exchange Rule 1600 to establish the New York Block

Exchange ("NYBX Facility" or the "Facility"). NYBX will be an electronic facility of the

Exchange to 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

NYSE Display Book® ("Display Book" or "DBK") while also considering protected quotations

of all automated trading centers.

The text of the proposed rule change is available at www.nyse.com, NYSE's principal

office, and the Commission's Public Reference Room.

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

[2]   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 Statutory Basis for, the Proposed Rule Change

1.   Purpose

The Exchange seeks to establish the NYBX Facility to provide its customers with the ability to aggregate multiple sources of liquidity and to facilitate trading in block-sized orders. This electronic, anonymous trading facility will also allow customers to execute smaller orders and have quick access to multiple price points of displayed liquidity to meet size and price execution requirements. The Facility allows for the interaction of non-displayed orders with the aggregate of displayed and non-displayed orders of the NYSE Display Book and the National Best Bid and Best Offer and considers protected quotations of all automated trading centers in compliance with Regulation NMS. The Facility will trade only securities listed on the NYSE (Tape A eligible securities).

NYBX orders will not effect an execution except as permitted by Rule 611 (Regulation NMS).[3] Thus, NYBX orders will not trade-through a Protected Bid or Protected Offer except as allowed in Regulation NMS. If the execution of an NYBX order would trade through an

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[3]   See Securities Exchange Act Release No.51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). When NYBX orders are calculated to be the midpoint of the NBBO, no trade-through executions will occur and, therefore, Rule 611 ("Order Protection Rule") of Regulation NMS will not be violated.

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automated trading center, the NYBX Facility will send routing instructions to the NYSE Routing

Broker[4] ("Routing Broker") and the Routing Broker will route the applicable volume (e.g., the

price and size of the displayed quotation) to the automated trading centers to attempt to execute

with applicable protected quotations. The Routing Broker will also send applicable marketable

orders from the NYBX Facility to the DBK to attempt to execute with contra side interest in the

DBK's depth of book. The routing of orders from the NYBX Facility to automated trading

centers, via the Routing Broker, occurs almost simultaneously with the sending of orders from

the NYBX Facility to the DBK.

Trading in the Facility will occur during regular trading hours of the Exchange (9:30 a.m.

Eastern Time ("ET") to 4:00 p.m. ET). On those days that the Exchange closes for business at

times other than 4:00 p.m., the NYBX will close at those times as announced by the Exchange.

NYBX orders to buy or sell securities will not be available for trading until such securities have

opened on the Exchange.

Orders that originate in the NYBX Facility and execute on the DBK will print regular

way as NYSE prints ("N") pursuant to the Consolidated Tape Association Plan ("CTA" Plan")

through the NYSE. Executions that occur solely within the NYBX Facility ("NYBX only

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[4]   See NYSE Rule 17(c) ("Operation of Routing Broker"). Subsection (1) of Rule 17(c)
        provides:

> The Routing Broker(s) will receive routing instructions from the Exchange, to
> route orders to other market centers and report such executions back to the
> Exchange. The Routing Broker(s) cannot change the terms of an order or the
> routing instructions, nor does the Routing Broker(s) have any discretion about
> where to route an order.

As per Rule 17(c), the NYBX Facility will use the Routing Broker to send NYBX orders
to the DBK and to automated trading centers pursuant to Regulation NMS when
attempting to execute such orders.

trades") will also be printed pursuant to the CTA Plan, but will print with a modifier that will identify the execution as being outside the Display Book. Such trades will print to Tape A.[5]

Because executions that occur solely within the NYBX Facility will be printed with a different print modifier than those executions that occur in the DBK, such executions will not be counted for certain NYSE order processing purposes. Thus, Exchange systems will not include NYBX only trades when calculating trades that trigger the following DBK executions: 1) pre-opening indications; 2) last sale trades; 3) odd lot trades; 4) Designated Market Maker ("DMMs")[6] obligations to re-enter the market; and 5) stop orders.

For example, in relation to odd lot trades, because the price and size of odd lot limit order trades are determined by certain factors, including NYSE trading volume and the last sale on the NYSE DBK, a trade printed from the NYBX Facility could seriously disadvantage the DMMs who are the contra side for all executions of odd lot orders. In this situation, absent the proposed changes to the NYSE rules, the DMM would be bound as the contra side customer to odd lot orders up to the size of the block print in this dark facility even though they would have no knowledge of the size of the orders that make up the block print. Additionally, because DMMs have market re-entry obligations for stabilization purposes, such obligations will not apply when trading takes place in the dark NYBX Facility as DMMs will have no order information or market data upon which to make their trading decisions. To do otherwise would expose DMMs to unnecessary and undue financial risk. This treatment is similar to the way the Exchange

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[5] The print modifier that will be used for trades that occur in the NYBX Facility will be the same print modifier that is used for NYSE MatchPoint® prints. NYSE MatchPoint is a separate anonymous (undisplayed or dark) trading facility of the NYSE (See Rule 1500 NYSE MatchPoint®).

[6] See Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

currently handles other special condition trades, including executions on NYSE MatchPoint^{SM}

(Rule 1500) and "sold" trades, which are reported to the tape out of sequence.

As a result of the way in which the Exchange will process executions that occur solely

within the NYBX Facility, the Exchange is seeking to amend those NYSE Rules that could be

impacted by such executions. By amending affected NYSE Rules, the Exchange is alerting

market participants to the fact that certain NYSE Rules that apply to trades that occur on the

DBK will not apply to trades that occur solely within the NYBX Facility. Therefore, the

Exchange is seeking to amend the following NYSE rules:

1) Rule 13 (Definitions) "Sell "Plus" – Buy "Minus" Order:"

The Exchange is proposing to add to the definition of the Sell Plus – Buy Minus order the

following text: "For purposes of this definition, a transaction that occurs in the NYBX Facility

shall not be considered in the operation of sell plus – buy minus orders on the Exchange (See

Rule 1600)."

2) Rule 13 (Definitions) "Stop Order:"

The Exchange is proposing to add to the definition of the Stop order the following text: "For

purposes of this definition, a transaction that occurs in the NYBX Facility shall not be considered

in the operation of stop orders on the Exchange (See Rule 1600)."

3) Rule 15. "Pre-Opening Indications:"

The Exchange is proposing to add to section (d) of the rule governing pre-opening

indications the following text: "A transaction that occurs in the NYBX Facility shall not be

considered in the operation of this rule (See Rule 1600)."

4) Rule 15A. "Order Protection Rule:"

The Exchange is proposing to add .60 to the "Supplementary Material" section of the Order Protection rule the following text: "A transaction that occurs in the NYBX Facility shall not be considered in the operation of this rule (See Rule 1600)."

5) Rule 79A. "Miscellaneous Requirements on Stock Market Procedures:"

The Exchange is proposing to add to subsection (8) of the "Supplementary Material" section of the Miscellaneous Requirements on Stock Market Procedures rule the following text: "For purposes of this provision, the "last sale" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

Additionally, the Exchange is proposing to add to section .30(d) of the Supplementary Materials the following text: "For purposes of Rule 79A.30, a transaction that occurs in the NYBX Facility shall not be considered the "last sale," the "current sale," or the "last previous sale (See Rule 1600)."

6) Rule 100. "Round –Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders:"

The Exchange is proposing to add to the rule for "Round –Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders" under subsection (a) Transactions of Specialist –Odd Lot Dealer" subsection (d), which will have the following text: "For purposes of this rule, the "last different round lot price" shall not include prices of transactions that occur in the NYBX Facility (See Rule 1600)."

7) Rule 104T. "Dealings by DMMs:"

The Exchange is proposing to add to Rule 104T in the "Supplementary Material" section, under ("Functions of DMMs") subsection .10(5), the following text: "For purposes of this

provision, the "last trade price" shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600)."

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section under subsection (c) ("Prohibited Transactions") of subsection (5) at subsection (III) the following text: "As used in (i) and (II) above, the term "price" shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600)."

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section, under subsection .10(6) ("DMM Transactions in Securities that Establish or Increase the DMM's Position") at subsection (ii)(c) the following text: "As used in (a) and (b) above, the term "last differently priced trade" shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600)." In the same section, the Exchange is proposing to add to subsection (iii)("Re-entry Obligations for Conditional Transactions") subparagraph (c) ("Immediate re-entry is required after the following Conditional Transactions") at subparagraph (d) the following text: "For purposes of this section (iii), the terms "price," "trade," "last differently priced trade" and "independent trades" do not include any transaction that occurs in the NYBX Facility (See Rule 1600)." Further, in subparagraph (iv)(d) the Exchange is proposing to add the following text: "For purposes of this section (iv), the term "last differently-priced trade" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section, under section .12 ("DMMs' Investment Accounts") the following text: "References to "plus or zero plus tick" and the "Tick Test" in section .12 shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section, under section .13 ("Investment Transactions") in subsection (b) the following text: "(iii) References to "minus," "zero minus," "plus" and "zero plus" ticks in section .13 shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

8) Rule 104. "Dealings and Responsibilities of DMMs:"

The Exchange is proposing to add to the Supplementary Material section of Rule 104, under section .10, the following text: ".10 As used in this rule, the terms "price," "high price," "low price" and "last differently-priced trade" shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600)."

9) Rule 107A. "Registered Competitive Market-Makers:"

The Exchange is proposing to add to the Supplementary Material section of Rule 107A, under subsection .10 ("Each Registered Competitive Market-maker shall comply with the provisions of paragraphs B. (2), (3), (4) and (5) as follows:"), subsection (ii)(C) the following text: "References to "ticks" in Section (ii)(A),(B) and (C) above shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)." Additionally, at section .30, the Exchange is proposing to add the following text: "For purposes of this section .30, the terms "price" and "different price" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

10) Rule 110. "Competitive Traders:"

The Exchange is proposing to add to Rule 110 in subsection (d) the following text: "For purposes of this section (d), references to "ticks" and "previous day's closing price" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)." Additionally, in the same Rule at subsection (g)(3) the Exchange is proposing to add the following text: ""For

purposes of this section (g), references to "tick test," and "minus," "zero minus," "plus" and "zero plus ticks" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

11) Rule 116. ""Stop" Constitutes Guarantee:"

The Exchange is proposing to add to the Supplementary Material section of Rule 116, under subsection .40 ("Stopping" stock on market-at-the-close orders") subparagraph (C) the following text; "For purposes of this section .40, the "price of the last sale" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

12) Rule 123A. "Miscellaneous Requirements:"

The Exchange is proposing to delete the section entitled "Short Sales" at paragraph .71 "Specialists." The Exchange does not believe this section is necessary in light of other changes to short sale regulations.

13) Rule 123B. "Exchange Automated Order Routing System:"

The Exchange is proposing to add to Rule 123B in subsection (3)("Booth Support System") the following text: "For purposes of this section (3), the term "last sale" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

14) Rule 123C. "Market On The Close Policy And Expiration Procedures:"

The Exchange is proposing to add Supplementary Material .10 with the following text: "For purposes of Rule 123C, the terms "last sale" and "last sales" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

15) Rule 123D. "Openings and Halts in Trading:"

The Exchange is proposing to add to Rule 123D in the Supplementary Material section the following text: ".25 For purposes of this rule, a transaction that occurs in the NYBX Facility

shall not affect the calculation of the "last sale," prior close," "previous close," or any similar term (See Rule 1600)."

16) Rule 124. "Odd-Lot Orders:"

The Exchange is proposing to add to Rule 124 in the Supplementary Material section the following text: ".70 References to "round-lot transaction," "round-lot Exchange transaction," "opening transaction," "closing transaction," "reopening price," "re-opening transaction," "price" and "sale" shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

17) Rule 1000. "Automatic Execution of Limit Orders Against Order Reflected in NYSE Published Quotation:"

The Exchange is proposing to add to Rule 1000 in the Supplementary Material section the text ".11 The provisions of this rule with respect to "sale," "sale price," "last sale price," "closing price," and similar terms shall not include any transaction that occurs in the NYBX Facility (See Rule 1600)."

New Market Model Filing

On October 24, 2008, the SEC approved the New Market Model[7] 19b-4 rule filing, which established a new market model for the NYSE. In general, the New Market Model provides the following: (i) market participants have additional abilities to post hidden liquidity on Exchange systems; (ii) Designated Market Makers ("DMMs") replace the NYSE specialist; and (iii) increase the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. The Exchange believes there will be no significant impact on the operation of the NYBX Facility as a result of the New Market Model

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[7]   Ibid at footnote 4.

rule. With respect to the additional rules outlined above, the New Market Model rule replaces the term "specialist" with the term "DMM" and replaces references in certain of those rules to instances where the specialist would have taken action with respect to quoting or execution of orders to a reference to these actions being taken by Exchange systems. This reflects the increased automation of many of the formerly manual procedures on the Exchange.

Anonymity of the Facility

Because the NYBX is an anonymous trading platform, no order information is displayed to the public or to NYSE members. Clearance and settlement of executions occurring within the Facility will be anonymous. Trade reports will be disseminated after each execution.

NYBX Users

As provided in the proposed Rule (see subparagraph (b)(2)(H) ("Applicability and Definitions")) an NYBX "User" means "any member or member organization, Sponsoring Member Organization, Sponsored Participant and Authorized Trader that is authorized to access the NYBX Facility. A member or member organization that accesses the NYBX Facility may enter orders on its own behalf or for the account of a customer."

All NYSE members, member organizations, Sponsoring Member Organizations and their Sponsored Participants and Authorized Traders of Sponsored Participants are automatically eligible for access to NYBX. But, before access is granted to NYBX Users, all Users must go through a connectivity authorization process.[8] After NYBX Users obtain connectivity authorization they may access the NYBX.

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[8]   The NYBX Facility can only be accessed through an electronic FIX application and/or an internet-based password-protected order entry application. Users must fill out an application for connectivity through either of these two electronic connectivity capabilities. Once granted connectivity through the authorization process, eligible users may access the NYBX Facility.

<u>Entry of New York Block Exchange Orders</u>

NYBX Users will transmit their orders by means of an electronic interface. NYBX Users may enter, cancel and replace orders beginning at 3:30 a.m. ET until the close of the regular hours of the Exchange on any day that the Exchange is open for business. All orders must be available for automatic execution.

The NYBX Facility will send orders from the NYBX Facility to the DBK, via the Routing Broker, for execution when there is applicable marketable interest in the DBK.

<u>Cancellation of NYBX Orders:</u>

All unexecuted orders shall be cancelled in accordance with the designated order parameters and the time in force conditions designated on each order. Upon cancellation of an order, the NYBX Facility, via the Routing Broker, will send a cancellation report back to the NYBX User with all related order information. This cancellation process is referred to in the Rule as "cancelling back to the User." If not executed or cancelled by the end of the regular trading day, all NYBX orders will be automatically cancelled back to the User at the close of the regular trading day.

<u>New York Block Exchange Orders</u>

The NYBX Facility will accept and execute limit orders and NYBX pegging orders. All orders must be available for automatic execution. All orders when initially submitted must have a minimum size of one round lot of shares of NYBX eligible securities. Market orders will not be accepted in the NYBX Facility. NYBX time in force orders include "day orders" and "Good til Specified Time orders." The NYBX Facility order types are described below:

1. A "New York Block Exchange National Best Bid and Best Offer ("NBBO")[9] Pegging order" or "NBBO pegging order" is an order with an instruction to peg to the NBBO. The order may include an instruction to peg to the NBBO plus or minus the Exchange's minimum price variation ("MPV") as defined in Exchange Rule 62. The NBBO pegging order is an umbrella category for other types of pegging orders that may be entered into the Facility, which include the following:

      a. A "New York Block Exchange Midpoint Pegging Order" or "midpoint pegging order," is an order with an instruction to execute it at the midpoint of the NBBO. This type of pegging order will not provide for an instruction to peg to the midpoint of the NBBO plus or minus the Exchange's MPV, which is available for the other NYBX pegging orders.

      b. A "New York Block Exchange Primary Pegging Order" or "primary pegging order" is an order that is pegged to buy at the national best bid ("NBB") or sell at the national best offer ("NBO"). The order may include an instruction to peg to the NBB or the NBO plus or minus the Exchange's MPV.

      c. A "New York Block Exchange Market Pegging Order" or "market pegging order" is a market order that is pegged to buy at the national best offer ("NBO") or sell at the national best bid ("NBB") plus or minus the Exchange's MPV.

2. A "New York Block Exchange Day Order" or "day order" is an order that if not executed, expires at the end of the regular trading session on the day on which it was entered. If the order is not executed by the end of the regular trading session, the order or the portion thereof not executed will be cancelled back to the User on the same day such order was entered. On any

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[9]   The term "National Best Bid and Best Offer" or "NBBO" will have the same meaning as defined in Rule 600 of Regulations NMS.

business day the Exchange is scheduled to close at a time other than 4:00 p.m. ET, a day order will expire on the day it was entered at the specified closing time as determined and announced by the Exchange.

3. A "New York Block Exchange Good til a Specified Time" order or "GTT" order is an order that is available for trading until the specified time, after which such order or the portion thereof not executed will be cancelled back to the User.

NYBX Order Parameters

Required Order Parameters:

All NYBX orders must contain the following User-directed parameters: 1) symbol; 2) limit price: 3) side of the market (e.g., buy, sell or sell short) and 4) size of the order. If a User fails to enter any of the required order parameters in a NYBX order, the order will be rejected. NYBX optional order parameters are described below.

Optional Order Parameters:

Time in Force Condition: A User may designate an optional time in force condition for each NYBX order. If a User fails to designate a time-in-force condition for a NYBX order, the order will be treated as a day order and if not executed, will expire and be cancelled back to the User at the end of the regular trading session on the day on which it was entered.

Minimum Triggering Volume Quantity ("MTV"): The MTV is an optional User-directed order parameter designating a minimum amount of shares of a security against which an order will attempt to execute if there is sufficient contra side liquidity available in the NYBX Facility's depth of book, the DBK's depth of book (all displayed and non-displayed orders) and, if not optionally restricted as described below, the protected quotations of automated trading centers in securities listed on the NYSE at a price better than the order's limit price. No execution of an

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NYBX order will be attempted if the MTV of the order is not met. However, an NYBX order may attempt to execute if the execution size is less than the MTV provided the MTV was met at the time the order was evaluated for execution.

If a User does not enter an MTV designation for an order, the order will be treated as if there is no MTV and will attempt to match and execute with any available contra side liquidity at the order's limit price or better in the NYBX Facility's depth of book, the DBK's depth of book (all displayed and non-displayed orders) and the protected quotations of all automated trading centers in securities listed on the NYSE. It is important to note that an NYBX order will not be routed to an automated trading center for execution with a protected quotation unless the NYBX order would execute against the NYBX Facility's depth of book or the DBK's depth of book at a price that would trade through the protected quotation.

Optional Restriction of MTV Calculation

In addition to choosing the MTV calculation to include the contra side liquidity of the NYBX depth of book, the DBK depth of book and protected quotations of all automated trading centers to determine if the MTV of an order can be met, the User may also opt to restrict the MTV calculation of an order to include only the contra side liquidity of the NYBX Facility's depth of book and the DBK's depth of book. Thus, the restricted MTV calculation will not consider the protected quotations of automated trading centers. Regardless of whether an order has a restricted MTV calculation, the NYBX Facility will always route applicable NYBX orders to automated trading centers to attempt to execute with protected quotations in compliance with Regulation NMS.

Order Processing and Order Execution Sequence

When an order is entered into the NYBX Facility with an MTV designation, the Facility will evaluate the order and the available liquidity in the NYBX Facility's depth of book, the DBK's depth of book and protected quotations of all automated trading centers to determine if the entering order is marketable at the order's limit price or better. As discussed earlier, an NYBX order will not be routed to an automated trading center for execution with a protected quotation unless the NYBX order would execute against the NYBX Facility's depth of book or the DBK's depth of book at a price that would trade through the protected quotation. Thus, in making this determination, the Facility will honor all User-directed parameters, including the optional MTV designation and the MTV restriction, if any, and time in force conditions. After the NYBX Facility evaluates the NYBX order and the NYBX Facility's depth of book, the DBK's depth of book and the protected quotations of all automated trading centers, the Facility will attempt to execute the orders in the sequence described below.

1. An NYBX order, with or without an MTV, will first attempt to execute with available contra side liquidity on the DBK at the order's limit price or better. No execution of any NYBX order will be attempted unless the MTV of the order, if any, can be met. For all NYBX orders, if liquidity is available on the DBK with a price that is equal to or better than the price in the NYBX Facility, the order will be sent from the NYBX Facility to the DBK, via the Routing Broker, and will attempt to execute in the DBK until the order is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity in the DBK is exhausted. If, however, the NYBX Facility has available contra side liquidity at a better price than the price quoted on the DBK, the order will attempt to execute in the NYBX

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Facility until it is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until the marketable liquidity in the NYBX Facility is exhausted.

If the order executes against interest on the DBK, but is not exhausted, the unfilled portion of the order (the "residual order") will be sent back to the NYBX Facility where it will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until the applicable marketable contra side liquidity is exhausted. As discussed previously, if an NYBX residual order would execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book or the DBK's depth of book at a price worse than one or more protected quotations, the applicable volume will attempt to execute with protected quotations of automated trading centers pursuant to Regulation NMS.

Like all NYBX orders, the NYBX residual order will maintain its original time stamp unless the order is modified by the User. Thus, if an NYBX order is modified in any respect by the User (i.e., price, size, side, MTV or time in force condition) the order will lose its original price/time priority and time stamp and go behind other orders in the queue. If a pegging order is entered into the NYBX Facility, the Facility will automatically re-price the order when the NBBO changes and the pegging order will lose its original price/time priority and time stamp and will go behind other orders in the queue. For example, if a pegging order for $10 is entered into the Facility and the NBBO changes from $10 to $11, the Facility will automatically modify the order to be $11. Thereafter, if a non-pegging order for $10 is entered into the Facility and the NBBO goes down to $10, the non-pegging order will execute before the pegging order. This result occurs because the Facility honored the pegging parameter of the original order which in

turn required the Facility to modify the original pegging order causing such order to be treated as a newly entered order thus placing the pegging order behind the non-pegging order in the queue.

If the residual order is of greater size than the original MTV of the order, the original MTV will remain on the order. If the residual order is of lesser size than the original MTV of the order, the Facility will modify the MTV to equal the size of the residual order, and will send the residual order back to the NYBX Facility where it will attempt to execute with marketable incoming contra side liquidity until it is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until all marketable liquidity is exhausted. The residual order will not attempt to execute with other available liquidity at the order's limit price or better unless the modified MTV can be met. The NYBX residual order will continue to attempt to execute with applicable marketable contra side liquidity in the same sequence described above.

2. If there is no available contra side liquidity in the DBK's depth of book, the NYBX order will attempt to execute with available contra side liquidity in the NYBX Facility at the order's limit price or better. If the order has an MTV, the MTV must be met by the contra side interest in the NYBX Facility and, optionally, the protected quotations, before an execution can be attempted. If marketable liquidity is available in the NYBX Facility, the order will attempt to execute in the NYBX Facility until the order is exhausted or until the marketable liquidity in the Facility is exhausted. If the order is not exhausted and the order had an MTV, the Facility will modify the MTV to equal the size of the residual order provided the size of the residual order is less than the size of the original MTV. The order will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity is exhausted.

3. An NYBX order will only trade against an automated trading center if an execution of that order in the NYBX Facility's depth of book or the DBK's depth of book would trade through a protected quotation. Therefore, if an NYBX order would execute against interest in the DBK's depth of book or against interest in the NYBX Facility's depth of book at a price that would trade through a protected quotation, the NYBX Facility will route the applicable volume to the automated trading center and attempt to execute with such contra side liquidity. The order will be routed to the automated trading center via the Routing Broker, as defined in Rule 17(c). An NYBX order will not be routed to an automated trading center for execution with a protected quotation unless there is marketable contra side interest in the DBK's depth of book or in the NYBX Facility's depth of book.

If the routed NYBX order is not exhausted, the residual order will be sent back to the NYBX Facility where it will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity is exhausted.

Re-Processing of Residual Orders:

NYBX residual orders will attempt to execute with new applicable liquidity in the same sequence as described above. NYBX residual orders will retain their original time stamp throughout the regular trading day unless such orders are modified by the User, exhausted, expired or cancelled back to the User pursuant to time in force conditions. As discussed above, if residual orders are modified in any way by the User, the order will lose its original time/price priority or time stamp and will go behind other orders in the queue. If a residual pegging order is entered into the NYBX Facility, the Facility will automatically re-price the order when the

NBBO changes and the residual pegging order will lose its original time stamp and go behind other orders in the queue.

Any new liquidity that enters the NYBX Facility's depth of book, the DBK's depth of book and protected quotations of automated trading centers will be evaluated by the NYBX Facility to determine if such liquidity is eligible to execute with residual orders in the NYBX Facility. A residual order will continue to attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity is exhausted. As previously explained, if an NYBX residual order would execute against an order in the DBK's depth of book or in the NYBX Facility's depth of book, applicable volume will attempt to execute with protected quotations of automated trading centers pursuant to Regulation NMS.

NYBX Market Snapshot of Order Processing

The Facility will act upon market and order information available to it at the time an order is entered into the Facility. At the time an order is entered into the NYBX Facility, the NYBX algorithm will evaluate or take a "snapshot" of the market. This market snapshot includes all orders in the NYBX Facility's depth of book, the DBK's depth of book, and the protected quotations of automated trading centers (i.e., "away markets"). The examples below demonstrate how the NYBX snapshot coordinates order execution and allocation of shares. The example also demonstrates how the Minimum Triggering Volume ("MTV") of an NYBX order interacts with all liquidity in the NYBX Facility's depth of book, the DBK's depth of book and protected quotations of automated trading centers if applicable.

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NBBO is 101.10 to 101.15										
		NYSE Book			Aggregated Prices			Automated Trading Centers TOB		
Reserve	Display	Price	Display	Reserve	Volume	Price	Volume	Price	101.10	101.15
		101.21	2,000	40,000		101.21	96,000	Nasdaq	1500	1000
		101.20	700	20,000		101.20	54,000	ISE	500	500
		101.19	1,000	15,000		101.19	33,300	CHX	800	1000
		101.18	500	7,500		101.18	17,300	NYSE Arca	2000	2000
		101.17	1,000	4,000		101.17	9,300	Amex	200	100
		101.16	800			101.16	4,300		5000	4600
		101.15	1,500	2,000		101.15	3,500			
3,500	500	101.10			4,000	101.10				
4,000	500	101.09			8,500	101.09				
	1,000	101.08			9,500	101.08				
10,000	800	101.07			20,300	101.07				

NYBX Order Processing and Execution

The NYBX Facility will allow executions to occur within, at or through the NBBO, but will protect those bids and offers on the NYSE DBK that are at the same price or better (i.e., all NYSE bids and offers including depth of displayed and non-displayed orders) and protected quotations of other automated trading centers pursuant to Regulation NMS.

All NYBX orders will be evaluated on a price/time priority basis to ascertain whether such orders are eligible to execute against applicable available contra side liquidity based on the price and the MTV of the orders. As described in more detail below, orders with MTV designations may pre-empt the time/price priority.

Order Evaluation

As demonstrated in the "NYBX Market Snapshot," the Facility will act upon market and order information available to it at the time the order is entered into the Facility. Facility orders will execute with all available contra side liquidity in the NYBX Facility's depth of book, the DBK's depth of book and, optionally, the protected quotations of automated trading centers even if the execution size is less than the MTV designation provided the MTV designation was met at the time the order was entered and evaluated for execution. This functionality takes into consideration the fact that latency may occur when trading facilities evaluate liquidity on other

automated trading centers and also route orders to other automated trading centers. See the
example below.

Example**:**

A buy order of 200,000 shares with an MTV of 100,000 and a limit of 101.21 enters the
Facility. The Facility evaluates the order and liquidity on the markets.

The Facility reads:	NYSE depth to 101.21	96,000 shares
(MTV algorithm)	Away markets	4,600 shares at 101.15
	Other Facility orders	0 shares

In this example, the MTV can be met at the time order is evaluated. Therefore, the
Facility sends an order to the DBK to buy 200,000 shares at 101.21, and the NYSE sends the
applicable volume to the automated trading centers for execution via the Routing Broker.[10] Such
orders are routed from the NYSE to the automated market centers as Intermarket Sweep
Immediate Or Cancel orders ("ISO IOC" orders).

The ISO IOC orders are exhausted except for 1000 shares from Nasdaq. However, the
trade occurs because the size of the order met the MTV designation at the time the Facility
evaluated the order for execution.

Results of the Execution:

A total of 99,600 shares execute in the following manner:

The DBK executes 96,000 shares total (3,500 shares at 101.15; 800 shares at 101.16;
5,000 shares at 101.17; 8,000 shares at 101.18; 16,000 shares at 101.19; 20,700 shares at 101.20;
42,000 shares at101.21);

Automated trading centers execute 3,600 shares at 101.15.

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[10]   The NYBX Facility, via the Routing Broker (See NYSE Rule 17(c)), will route the
applicable volume to automated trading centers in compliance with Regulation NMS.

The unfilled portion of the order (i.e., the "residual order"), which is 100,400 shares with

an MTV of 100,000 at 101.21, will attempt to execute with marketable incoming contra side

liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is

exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until

all applicable marketable contra side liquidity is exhausted.

Residual Orders and the Automatic Reduction of the MTV

When an order with an MTV enters the NYBX Facility, the NYBX algorithm will

attempt to execute the order in the DBK's depth of book and the NYBX Facility's depth of book

provided the MTV can be met, which may or may not take into consideration the protected

quotations of automated trading centers depending upon the particular MTV parameter (i.e.,

restricted or non-restricted MTV calculation) on the order. If such execution occurs, which

exhausts the NYBX order, the trade will be printed to the tape and trade reports will be sent to

the User. If a residual order remains, the residual order will be sent back to the NYBX Facility

where it will attempt to execute with incoming orders to the NYBX Facility's depth of book and

the DBK's depth of book until the order is exhausted, expired or cancelled back to the User

pursuant to time in force conditions or until the applicable marketable contra side liquidity is

exhausted. If an execution of an NYBX residual order would occur in the NYBX Facility or in

the DBK, applicable volume will attempt to execute with protected quotations of automated

trading centers pursuant to Regulation NMS.

If the residual order is less than the original MTV designation of the order, the Facility

will automatically modify the MTV to equal the residual order, and the residual order will

continue to attempt to execute with available contra side liquidity that subsequently enters the

NYBX Facility's depth of book and the DBK's depth of book when and if the modified MTV

can be met, which may or may not take into consideration the protected quotations of automated

trading centers depending upon the particular MTV parameter (i.e., restricted or non-restricted

MTV calculation) on the order. See the example below.

Example**:**

A buy order for 100,000 shares with an MTV of 50,000 and a limit price of 101.20 enters

the NYBX Facility.

The NYBX Facility evaluates the order and reads the MTV:

DBK depth to 101.20	54,000 shares
Away markets	4,600 shares at 101.15
Other Facility orders	0 shares

In this example, the MTV can be met at the time the order is received into the

Facility.

The Facility sends an order to the DBK to buy 100,000 shares at 101.20 and the

NYSE sends ISO IOC orders, via the Routing Broker, to automated trading centers

("away markets") for execution of the NYBX order.

Results of the Execution**:**

The DBK executes 54,000 shares in the following manner: 3,500 at 101.15; 800

shares at 101.16; 5,000 shares at 101.17; 8,000 at 101.18; 16,000 shares at 101.19; 20,700

shares at 101.20.

4,600 shares at 101.15 execute on automated trading centers.

41,400 shares remain in the Facility and the MTV is modified by the Facility to be

41,400.

The NYBX residual order will continue to execute with applicable available

liquidity that subsequently enters the market when and if the MTV can be met.

<u>Price/Time Priority</u>

All orders entered into the NYBX Facility are placed in price/time priority according to their required order parameters (e.g., price, size, side of market, etc.) and optional order parameters (e.g., MTV, time in force conditions). NYBX orders that execute in the DBK will execute in price/time priority pursuant to the provisions of Rule 72.

NYBX price/time priority sequencing may be pre-empted or bypassed in the execution of orders when such orders have conditions (i.e., MTV designations) that require an exception to the price/time priority basis. For example, an initial order on one side of the market (i.e., buy side order or sell side order) with an MTV designation may lose its place in the NYBX Facility queue to subsequent orders on the same side of the market that have no MTV designations or have less restrictive MTV designations than the initial order. However, this exception to the price/time priority basis is dependent upon the MTV designation, if any, of the contra side liquidity. NYBX orders on both sides of the market (i.e., buy side and sell side) will be evaluated for price/time priority, and the MTV designations for all orders (buy side and sell side) will be honored by the NYBX Facility. See the examples below for exceptions to the NYBX Facility price/time priority basis.

Also, as discussed above, NYBX orders, including residual orders, will retain their original time stamp throughout the regular trading day unless such orders are modified by the User. If orders are modified by the User (i.e., change in price, size, side, MTV or time in force condition) the order will lose its original price/time priority and will go behind other orders in the queue. If a pegging order is entered into the NYBX Facility, the Facility will automatically re-price the order when the NBBO changes and the residual pegging order will lose its original time stamp and go behind other orders in the queue.

As the examples below demonstrate, the NYBX price/time priority basis will be pre-empted when:

1. the initial order (i.e., buy order or sell order) is marketable against the contra side order(s) (i.e., buy orders vs. sell orders) but cannot execute against the contra side order(s) because the MTV of the initial order is not met; and

2. a same side order is marketable against the contra side order(s) and is not restricted from executing because the MTV of that same side order can be met. In such case, the same side order can execute against the contra side order(s) even though the initial order had price/time priority.

It is important to note that NYBX orders retain their time stamp or "price/time priority" with respect to later contra side order(s) that are sufficient to meet the initial order's MTV designation.

Example No. 1:

Initial order in NYBX to buy 100,000 @ 20.00 with an MTV of 100,000. An order to sell 5000 @ 20.00 is entered into NYBX. (Assume there are no marketable contra side orders in DBK or protected quotations.) No execution occurs, because the initial order's MTV is not met. Then an order to buy 10,000 @ 20.00 is entered into NYBX with no MTV. 5000 of the 10,000 buy order executes against the order to sell 5000 @ 20.00, even though the buy order for 100,000 had price/time priority.

Now the NYBX book is:

Buy 100,000 @ 20.00 (MTV of 100,000)

Buy 5000 @ 20.00 (no MTV)

Now an order to sell 100,000 @ 20.00 enters the NYBX book. The initial order to buy retains its price/time priority with respect to this sell order, and the two orders for 100,000 execute against each other at 20.00.

Examples Nos. 2, 2(a), 2(b), 2(c) and 2(d):

Order to buy 500,000 @ 20.00 with an MTV of 500,000 enters the NYBX book (B1). Then an order to sell 400,000 @ 20.00 with an MTV of 400,000 enters the NYBX book (S1). (Assume neither order is marketable against any order in DBK nor any protected quotations.) No execution occurs, because the buy order's MTV is not met.

Then an order to buy 300,000 @ 20.00 with an MTV of 300,000 enters the NYBX book (B2). No execution occurs, because the MTV of the sell order for 400,000 is not met.

Then an order to sell 50,000 @ 20.00 with an MTV of 50,000 enters the NYBX book (S2). The book is as follows:

B1: Buy 500,000 @ 20.00 (MTV of 500,000)

B2: Buy 300,000 @ 20.00 (MTV of 300,000)

S1: Sell 400,000 @ 20.00 (MTV of 400,000)

S2: Sell 50,000 @ 20.00 (MTV of 50,000)

No order executes. B1 cannot execute because its MTV is not met. In the case of B2, S1, and S2, while there is sufficient contra side liquidity to fill these orders, these orders cannot execute because the respective MTVs on the contra side are not met.

Examples 2(a), 2(b), 2(c) and 2(d) below are based on the above details. With each example, assume the book is as it appears above (with two buy orders and two sell orders). Do not carry one example into the next example.

2(a). An order to sell 50,000 @ 20.00 (S3) enters the NYBX book. B1's MTV is now met, therefore, B1 executes against S1, S2, and S3.

2(b). An order to buy 50,000 @ 20.00 (B3) enters the NYBX Facility. B3 executes against S2. B1, B2, and S1 are by-passed in price/time priority because their MTVs prevent them from executing.

2(c). However, assume that B3 is now an order to buy 100,000 @ 20.00. In this case, S1 (and not S2) would execute against B2 and B3. S1 retains its price/time priority over S2 with respect to contra side order(s) that, when combined, meet S1's MTV.

2(d). An order (S3) to sell 100,000 @ 20.00 with an MTV of 100,000 enters the NYBX Facility. In this example the MTV of B1 is now met. Therefore, B1 would execute with S1 leaving a residual order of 100,000 shares. B1 cannot trade with S2 because B1's MTV of 500,000 cannot be met by S2. If B1 attempted to execute with S2 the execution would only be for 450,000 shares which would violate B1's 500,000 MTV. Also, B1 cannot get the additional 50,000 shares needed to meet the 500,000 MTV from S3 because S3 has an MTV of 100,000. Thus, B1's residual order of 100,000 shares will bypass S2 to execute against S3, thereby satisfying the MTVs of both B1 and S3.

Midpoint Executions

The example below will illustrate how midpoint executions occur in the NYBX Facility.

Example:

NBBO   =   122.20 ISE – 122.26 PHLX   5,000 x 10,000

NYSE DBK 1   =   Sell 5,000 shares at 122.26

NYSE DBK 2   =   Buy 5,000 shares at 122.20

NYBX 1   =   Sell 75,000 shares at 122.22, MTV of 50,000

NYBX 2   =   Buy 100,000 shares at 122.26, MTV of 50,000

The NYBX Facility determines that the allocation of the NYBX2 order should be:

- The MTV of NYBX 1 has been satisfied as there is sufficient contra side liquidity and is eligible for execution

- The MTV of NYBX 2 has been satisfied as there is sufficient contra side liquidity and is eligible for execution

- Nothing eligible for protected quotations of automated trading centers

- 25,000 shares to DBK

- 75,000 shares to trade within the NYBX Facility

Results of the Executions:

- NYBX 2 sends 25,000 shares to buy to DBK at 122.26

- NYBX 2 buys 75,000 shares from NYBX 1 at 122.23 (the midpoint of the NBBO)

- NYBX 2 fills 5,000 shares at 122.26 with DBK 1

- The 20,000-share unfilled balance of NYBX 2 is placed in the NYBX Facility at 122.26 with a new MTV of 20,000 shares.

Compliance with Regulations NMS

NYBX orders will not trade-through a Protected Bid or Protected Offer except as allowed by Regulation NMS. As discussed above, the NYBX Facility will evaluate the NYBX Facility order's parameters, including its MTV, if any, to determine if such order is required to execute with protected quotations on the automated trading centers in compliance with Regulation NMS. The example below will demonstrate how the Facility complies with Regulation NMS.

Example:

NBBO   =   122.20 ISE – 122.26 PHLX   5,000 x 10,000

NYBX 1   =   Sell 5,000 at 122.26 (no MTV designation)

NYSE DBK 1   =   Sell 5,000 at 122.27

NYBX 2   =   Buy 100,000 at 122.27 (no MTV designation)

The NYBX Facility determines that the allocation of the order should be:

o   85,000 shares to DBK

o   10,000 shares to PHLX

o   5,000 shares to trade within NYBX Facility

Results of the Execution:

- NYBX 2 sends a total of 85,000 shares to buy from DBK at 122.27

- NYBX 2 trades with NYBX 1 for 5,000 shares at 122.26

- NYBX 2 trades with DBK 1 for 5,000 shares at 122.27

- NYBX Facility routes, via Routing Broker, 10,000 shares of NYBX2 to PHLX and NYBX2 executes 10,000 shares on PHLX at 122.26

- NYBX 2 is routed to PHLX, via the Routing Broker, 10,000 shares at 122.26 (ISO IOC) and NYBX 2 executes 10,000 shares on PHLX

- NYBX 2 posts 80,000 shares to buy at 122.27 remaining from the 85,000 shares sent to the DBK in the NYBX Facility

Equal or Better Prices

If the contra side liquidity on the DBK is priced equal to or better than the liquidity in the NYBX Facility, the order will be sent to the DBK for execution. If an NYBX order that is sent to the DBK is not fully executed in the DBK, the Routing Broker will route the unfilled portion

of the order - the residual order- back to the NYBX Facility. If the residual order is less than the designated MTV, the Facility will modify the MTV to equal the residual order. The residual order will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until the applicable marketable liquidity is exhausted. See the example below.

Example:

NBBO	=	122.20 ISE – 122.26 PHLX 5,000 x 10,000
NYSE DBK 1	=	Sell 5,000 shares at 122.26
NYBX 1	=	Sell 5,000 shares at 122.26
PHLX	=	Sell 10,000 shares at 122.26
NYBX 2	=	Buy 5,000 shares at 122.26

The NYBX Facility determines that the allocation of the order should be:

No shares routed to automated trading centers

5,000 shares sent to DBK at 122.26

No shares remain in the NYBX Facility

Results of the Execution:

- NYBX 2 sends 5,000 shares to buy from NYSE DBK at 122.26

- NYBX 2 trades with DBK 1 for 5,000 shares at 122.26

- Nothing trades within the NYBX Facility

NYBX Best Price

If the contra side liquidity in the NYBX Facility is priced better than the price quoted on the DBK, an NYBX order will execute in the NYBX Facility in price/time priority until the order is exhausted.

Additionally, an order may be executed in the NYBX Facility without interacting with the DBK when the price of the NYBX order is within the NBBO and at a price that is better than all other orders in the same security on the DBK. See the example below.

Example:

NBBO	=	122.20 ISE – 122.26 PHLX 5,000 x 5,000
NYBX 1	=	Sell 5,000 shares at 122.25
PHLX	=	Sell 5,000 shares at 122.26
NYSE DBK	=	Sell 5,000 shares at 122.27
NYBX 2	=	Buy 100,000 shares at 122.25

The NYBX Facility determines that the allocation of the order should be:

- Nothing to protected quotations of automated trading centers
- Nothing to DBK
- 5,000 shares within NYBX Facility

Results of the Execution:

NYBX 2 trades with NYBX 1 for 5,000 shares at 122.25

NYBX 2 posts 95,000 shares to buy at 122.25 in NYBX Facility

Orders Crossed in the NYBX Facility

When two NYBX orders in the Facility are marketable against each other and there is no marketable contra side liquidity in the DBK's depth of book at the order's limit price or better,

and the prices of the two NYBX orders are crossed, the Facility will calculate the price of the execution to be the price nearest to or at the midpoint of the NBBO. The example below assumes that the execution price is at or between the NBBO, which will have no trade through obligation for protected quotations pursuant to Regulation NMS.

Example:

NBBO =	20.00 PHLX - 20.05 ISE
NYBX 1 -	Buy 50,000 shares at 20.02 with an MTV of 20,000
NYBX 2 -	Sell 100,000 shares at 20.00 with an MTV of 20,000

The execution price would be 20.02 as it is the price closest to the midpoint of the NBBO, which is 20.025.

Round Lot, Partial Round Lot and Odd Lot Orders

The NYBX Facility will accept orders with round lots and partial round lots ("PRLs"), and will reject odd lot orders. However, the execution of NYBX orders may result in round lots, PRLs and odd lots. The odd lot portion of a PRL order will remain in the Facility until it is executed, and if not executed, it will be cancelled back to the User pursuant to the order's time in force conditions or at the end of the regular trading day. If the execution of an NYBX order results in a residual order with an odd lot component, this odd lot component will remain in the Facility until it is executed, and if not executed, it will be cancelled back to the User pursuant to time in force conditions at the end of the regular trading day.

Sub-Penny Orders

The NYBX Facility shall not display, rank, or accept a bid or offer or an order in any NMS stock priced in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Such orders will be rejected by the Facility.

The NYBX Facility shall not display, rank, or accept a bid or offer or an order in any NMS stock priced in an increment smaller than $0.001 if that bid or offer or order is priced less than $1.00 per share. Such orders will be rejected by the Facility.

The NYBX Facility will reject any NYBX pegging orders priced below $1.00.

The NYBX Facility's execution price may be calculated to three (3) decimals when the NBBO is an odd penny spread (i.e., one (1) penny, three (3) pennies, five (5) pennies, etc.), and the trade price is greater than $1.00. NYBX executions with midpoint pricing may be priced at increments as low as $0.001.

The NYBX Facility's execution price may be calculated to four (4) decimals when the NBBO is an odd $1/10^{th}$ penny spread (i.e., one tenth (0.1) penny, three tenths (0.3) pennies, five tenths (0.5) pennies, etc.), and the trade price is less than $1.00. NYBX executions with midpoint pricing may be priced at increments of $0.0001.

Half Penny Increments

Executions on the NYBX Facility may be calculated to three (3) decimals when the NBBO is an odd penny spread (i.e., one (1) penny, three (3) pennies, five (5) pennies, etc.). For example, if the NBBO of Stock XYZ is $23.01 to $23.02, the price is $23.015. As a consequence, executions at the midpoint of the NBBO may be in half penny increments requiring the use of three decimals, as demonstrated in the example.[11]

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[11] The NYBX Facility will not display, rank or execute orders in any NMS stock priced below one dollar ($1.00). In addition, the NYBX Facility will not display, rank or execute orders in increments smaller than a penny. However, when there is an odd penny spread, as described above, NYBX will execute it in a half penny increment. In response to public comments to the Regulation NMS Proposing Release, the Commission wrote the following (See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) at Page 37589, footnote No. 831):

"Executions occurring at a sub-penny price resulting from a midpoint, VWAP, or similar volume-weighted pricing algorithm are not prohibited by Rule 612."

<u>Trading Ahead of Customer Orders</u>

In the event an NYBX order executes resulting in a member or member organization's trading ahead of a held customer order at the same price, the Exchange believes that Exchange Rule 92 (Limitations on Member's Trading Because of Customers' Orders) in certain instances may be implicated. Exchange Rule 92(a) generally restricts a member or member organization from entering a proprietary order with knowledge of a customer order that could be executed at the same price. Rule 92(b) through (d) provides several exceptions to the general restrictions of Rule 92(a) including the "black box" exemption which, depending on the facts and circumstances, may be applicable to orders entered into the NYBE Facility.[12] When trading on the NYBX Facility, all users will be expected to comply with Rule 92(a) unless such trading falls within an applicable exception in Rule 92(b) through (d).

<u>Halting, Suspending and Closing of NYSE NYBX Trading on the Exchange</u>

Trading on the NYBX Facility will be halted or suspended whenever the NYSE halts or suspends trading in a particular security or in all securities for regulatory and/or non-regulatory reasons pursuant to NYSE Rules 51 and 123D and 80B, including:

1) in the case of a particular security whenever, for regulatory purposes, trading in the security has been halted, suspended or closed on the Exchange or the listing exchange; or

2) In the case of a particular security trading on the Exchange, if the authority under which a security trades on the Exchange or its primary market is revoked (e.g. because it is delisted), and

3) No terms or conditions specified in this subsection shall be interpreted to be inconsistent with any other rules of the Exchange.

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[12]   See Information Memo 2001-33, October 8, 2001 and Securities Exchange Act Release No. 34-44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (SR-NYSE- 1994-34).

<u>Clearance and Settlement of NYBX Executions</u>

Details of each NYBX trade will be automatically matched and compared by the Exchange and will be submitted to a registered clearing agency for clearing and settlement on a locked-in basis.[13] All executions effected by a Member or Member Organization will be cleared and settled using the Member's and Member Organization's account, and all executions effected by a Sponsored Participant will be cleared and settled using the relevant Sponsoring Member Organization's account.

Because the NYBX Facility is an anonymous trading facility, the proposed rule will require NYBX transaction reports to indicate the details of the transaction, but not to reveal contra party and clearing firm identities,[14] except under the following circumstances: 1) in the event the National Securities Clearing Corporation ("NSCC")[15] ceases to act for a Member or Member Organization, which is the unidentified contra side of any such trade processing, and /or the relevant clearing firm, the NYSE shall have the responsibility to identify to Members or Member Organizations the trades included in reports produced by the NSCC that are with the affected Member or Member Organization, and 2) for regulatory purposes or to comply with an order of a court or arbitrator.

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[13] NYBX executions will be compared through the Regional Interface Organization Online process ("RIO Online"). RIO Online is NYSE Arca, Inc.'s internal processing interface that sends order execution information to DTCC. RIO Online gathers the trades that are executed on any given day, places the trades into the appropriate message format and sends them to DTCC. RIO Online provides a record of all trades that were sent to DTCC. RIO Online is also used to manage any approved trade corrections.

[14] Post-trade anonymity described herein has been previously approved by the Securities and Exchange Commission for other exchanges (<u>See</u> e.g., Securities Exchange Act Release No. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003)(SR-NASD-2003-85), and Securities Exchange Act Release No. 49786 (May 28, 2004), 69 FR 32087 (June 8, 2004)(SR-PCX-2004-40).

[15] The Exchange will submit completed NYBX trades for clearance and settlement to NSCC, which is a subsidiary of the Depository Trust Clearing Corporation ("DTCC").

The trade reports that the NSCC will receive from the NYBX Facility for anonymous trades will contain the identities of the parties to the trade. This measure will enable the NSCC to conduct its risk management functions and settle anonymous trades. The trade report sent to the NSCC will contain an indicator noting that the trade is anonymous. On the contract sheets the NSCC issues to its participants, the NSCC will substitute "ANON" for the acronym of the contra party. The purpose of this masking is to preserve anonymity through settlement.

The Exchange will be able to maintain anonymity with respect to disputed or erroneous trades because the Exchange resolves disputes through a centralized process and conducts the process on behalf of its Members and Member Organizations.

Dissemination of Trading Information

The NYBX Facility will report trade information to the Securities Information Processors ("SIPs") for all NYBX eligible securities that execute solely within the NYBX Facility. Such trades will be printed based on which side of the trade ("buy" or "sell") was first entered into the NYBX Facility. Market data for NYBX eligible securities will be disseminated via the consolidated tape pursuant to the Consolidated Tape Association Plan ("CTA Plan"). All executions that occur solely within the NYBX Facility will be printed with an "N" for the NYSE and an ".X" to identify these executions as NYBX Facility executions (i.e., "N.X"). The "N.X" modifier is also used to identify NYSE MatchPoint® executions. Orders that originate in the NYBX Facility and execute on the DBK will print regular way as NYSE prints ("N") pursuant to the Consolidated Tape Association Plan ("CTA" Plan") through the NYSE. All trades will indicate the market of execution as the NYSE for CTA purposes.

<u>Member Organization and Non-Member Access to the NYBX Facility</u>

Members and member organizations of the Exchange are automatically eligible for access to the NYBX Facility by their membership on the Exchange. A non-member who wishes to trade securities on the NYBX Facility may do so as a "Sponsored Participant" pursuant to Rule 123B.[16]

As previously explained, all members, member organizations and Sponsored Participants of Sponsoring Member Organizations must first obtain connectivity authorization before they can access the NYBX Facility.

<u>Limitations on the Use of the NYBX Facility:</u>

      (A)   DMMs on the Floor of the Exchange are not authorized to access the NYBX Facility. The off-Floor operations of DMM units may obtain authorized access to the NYBX Facility provided they have policies and procedures and barriers in place that preclude prohibited information sharing between the DMM unit and such units' DMMs on the Floor of the Exchange as provided in Rule 98 ("Operation of a Specialist Unit"), which was approved by the SEC in August 2008 or "former" Rule 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organizations"), whichever Rule 98 applies to the particular DMM unit.[17]

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[16]   <u>See</u> Securities Exchange Act Release No. 58758 (October 8, 2008) 73 FR 62352 (October 20, 2008) (SR-NYSE-2008-100).

[17]   Currently, new Rule 98 ("Operation of a Specialist Unit"), which was approved by the SEC in August 2008 (<u>see</u> Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008)(SR-NYSE-2008-45) and "former" Rule 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organizations") are both in effect. DMM units may operate under either Rule 98 (new or former) by meeting the requirements of the applicable Rule. However, when trading in

(B)   Members who have authorized access to NYBX are not permitted to enter

orders into the NYBX Facility from the Floor of the Exchange when such

orders are for their own accounts, the accounts of associated persons, or

accounts over which it or an associated person exercises investment

discretion. Similarly, members on the Floor may not have such orders

entered into the NYBX Facility by sending them to an off-Floor facility

for entry. Members with authorized access to the NYBX Facility may only

enter customer orders into the NYBX Facility from the Floor of the

Exchange. Members that have authorized access to the NYBX Facility

may enter proprietary and customer orders into NYBX Facility from off

the Floor of the Exchange.

(C)   Like DMMs, Registered Competitive Market Makers ("RCMMs") on the

Floor of the Exchange are not authorized to access the NYBX Facility.

Off-Floor operations of RCMM units may obtain authorized access to the

NYBX Facility provided they have policies, procedures and barriers in

place that preclude information sharing between RCMM on-Floor and off-

Floor operations.

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or through the NYBX Facility, DMMs units of the Exchange must comply with
subsection (h)(2)(A) ("Limitations on the Use of the NYBX Facility") of the proposed
Rule.

Pursuant to subsection (h)(2)(B) of the proposed Rule, Floor brokers may only enter
agency orders into the NYBX Facility from the Floor of the Exchange, and may enter
agency and proprietary orders into the NYBX Facility from off the Floor of the
Exchange.

Registered Competitive Market Makers ("RCMMs") are similarly prohibited from
entering orders into the NYBX Facility while on the Floor of the Exchange under
(h)(2)(C).

Applicability of Section 11(a) and (b) of the Act

Section 11(a) of the Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. The "Effect versus Execute Rule," as Rule 11a2-2(T) is known, permits an exchange member, subject to certain conditions, to effect a transaction for such accounts, utilizing an unaffiliated member to execute transactions on the exchange floor. The Rule requires that : (1) the order must be transmitted from off-floor; (2) once the order has been transmitted, the member may not participate in the execution; (3) the transmitting member may not be affiliated with the executing member; and (4) neither the member or associated person may retain any compensation in connection with effecting such transaction, respecting accounts over which either has investment discretion, without the express written consent of the person authorized to transact business for the account. The Exchange requests interpretation that NYBX orders entered from off-floor comply with the following provisions of the Rule:

1. Off -Floor Transmissions: Orders are electronically entered into the NYBX Facility from on and off the Floor of the Exchange; however, Members are not permitted to enter orders into the NYBX Facility from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Also, DMMs are not permitted to enter any orders into the NYBX Facility and they do not have access to the NYBX Facility from the Floor, as described in more detail below. However, "upstairs" DMM units will be permitted to be NYBX Users and may enter orders from off the Floor provided such firms have adequate policies, procedures and

"barriers" in place between the upstairs firm and the Floor DMMs, which will preclude sharing of trading information that is not permitted by this Rule and the Act.

2. Non-Participation in Order Execution: In accordance with Rule 11a2-2(T), once orders are entered into the NYBX Facility, a member may not participate in, guide or influence the execution of such orders. NYBX orders are sent by electronic means (i.e., FIX application or an internet based application) directly into the NYBX Facility. Users may enter and cancel NYBX orders any time during the regular trading day of the Exchange. However, once trading in the Facility commences, the Facility will not permit a user to affect the order or its execution in any way. Thus, when the trading of orders commence, the member relinquishes all control of NYBX orders. Users have no special or unique order handling or trading advantages when trading on the NYBX Facility.

3. Affiliated Executing Members: Rule 11a2-2(T) provides that the transmitting member may not be affiliated with the executing member. The Commission has previously recognized that this requirement may be satisfied when automated exchange facilities are used.[18] NYBX is a fully automated, electronic trading facility. As described above, NYBX orders are sent by electronic means to the NYBX Facility. Matching, trading and routing of orders are effectuated through an algorithm, which does not permit a user to affect the order or its execution in any way. Thus, when the trading of orders commence, the member relinquishes all control of NYBX

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[18]   In considering the operation of automated execution facilities by an exchange, the Commission has noted in the past that the execution of an order is automatic once it has been transmitted into a system or facility, and therefore satisfies the independent execution requirement of rule 11a2-2(T). See, e.g., Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding New York Stock Exchange's ("NYSE") Off-Hours Trading Facility) and Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(File No. 10-131).

order. At the completion of each execution, transaction reports, including order cancellation reports for orders that were not executed, are sent back to the user.

The Exchange believes that NYBX Facility complies with the "Affiliated Executing Member" provision of Rule 11a2-2(T) because the automatic execution function of the NYBX Facility ensures that all authorized NYBX Users have the same abilities with respect to entering orders, and no Users can effect an order once the order has been entered and the NYBX Facility trading commences. The design of the NYBX Facility ensures that members do not possess any special or unique trading advantages in the handling of orders. Thus, the Rule's provision respecting the use of affiliated members to execute orders is not implicated by the NYBX Facility.

4. Non-Retention of Compensation: The Exchange represents that members that rely on Rule 11a2-2(T) for a managed account transaction must comply with the limitations on compensation set forth in the Rule.

Section 11(b) of the Act and SEC Rule 11b-1 thereunder, which pertains to DMMs in the New Market Model, is not applicable to the operation of the NYBX Facility for several reasons. First, as stated above, DMMs on the Floor of the Exchange are not able to access the NYBX Facility from the Floor. NYBX can only be accessed through an electronic FIX application and/or an internet based, password-protected order entry applications, which are not available to individual DMMs on the Floor. Although the upstairs firms that employ DMMs will be able to access the NYBX Facility through these two applications, such firms must be authorized to access NYBX, and the firms must have policies and procedures and information barriers in place to preclude the improper sharing of trading information between the DMMS on the Floor and their upstairs firms pursuant to Section (h)(2)(A) (Section (h)(2)(C) applies to RCMMs) of the

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proposed Rule, which refers to new and former NYSE Rule 98. Further, the DMM firms will be

subject to examinations by the Financial Industry Regulatory Authority, Inc. ("FINRA") as agent

for NYSE Regulation, Inc. pursuant to a Regulatory Services Agreement dated July 30, 2007, to

ensure that such policies and procedures and information barriers are in place and are adequate to

preclude improper sharing of trading information.

Specifically, FINRA examiners will perform an on-site review of the combined DMM

firm's written policies and procedures and determine if they are adequate in relation to trading on

the NYBX. In addition, FINRA will interview appropriate individuals both within the affected

departments as well as other areas of the DMM firm to determine whether firm policies have

been appropriately disseminated and appear to be followed in relation to NYBX trading. The

examination will also determine whether there have been any apparent breaches of the

information barriers.

Second, the individual DMM on the Floor has no NYBX order entry information or

NYBX market data of those orders that enter the NYBX Facility as it is a dark trading

environment. Without access to NYBX and without access to NYBX order entry information

and market data, DMMs will not be able to manipulate NYBX trading.

Third, the Exchange has an internal authorization process that authorizes NYBX Users to

access NYBX through the FIX application and internet by providing an authorized user name

and protected password. Individual DMMs on the Floor will not be authorized through the

internal process. Upstairs firms that employ DMMs may be authorized to access NYBX through

NYBX's internal authorization process, provided, as noted above, FINRA, as agent for NYSE

Group, examines such firms to ensure that policies, procedures and barriers are in place and are

adequate to preclude improper sharing of trading information.

Therefore, because DMMs on the Floor will not have access to the NYBX Facility or NYBX order information, and because the DMM firms are subject to regulatory examinations to ensure the integrity of information barriers between the firms and their DMMs on the Floor, the Exchange believes that Section 11(b) of the Act and SEC Rule 11b-1 thereunder, which pertains to DMMs, is not applicable to the operation of the NYBX Facility.

Regulation of the NYBX Facility

The Exchange notes that NYSE Regulation represents that it has appropriate policies and procedures in place to adequately and effectively regulate the NYBX Facility. A surveillance plan describing the various surveillances that will be in place to monitor the operation of NYBX will be submitted to the SEC under separate cover.[19] Also, FINRA, as agent for NYSE Group, will perform examinations of DMM firms that trade on the NYBX Facility as described above.

2.   Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")[20] for this proposed rule change is the requirement under Section 6(b)(5)[21] 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 facility and, in general, to protect investors and the public interest. By this filing, the Exchange is seeking to establish the NYBX Facility to provide its customers with the ability to aggregate multiple sources of liquidity and to facilitate trading in block-sized orders. This electronic, anonymous trading facility will also allow customers to execute smaller orders and have quick access to multiple price points of

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[19]   The NYBX Surveillance Plan will be provided to the Commission, and it will be implemented prior to any trading on the NYBX Facility.

[20]   15 U.S.C. 78f(a).

[21]   15 U.S.C. 78f(b)(5).

displayed liquidity to meet size and price execution requirements. The Facility allows for the interaction of non-displayed orders with the aggregate of displayed and non-displayed orders of the DBK and the National Best Bid and Best Offer ("NBBO") and considers protected quotations of all automated trading centers in securities listed on the NYSE in compliance with Regulation NMS. Therefore, the proposed rule filing is consistent with the promotion of just and equitable trading, and it seeks to protect the rights of investors and the public.

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 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:

<u>Electronic comments</u>:

- 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-2008-119 on the subject line.

<u>Paper comments</u>:

- 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-2008-119. 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-2008-119 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.[22]

Florence E. Harmon
Acting Secretary

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[22]   17 CFR 200.30-3(a)(12).