



March 20, 2015

Via Electronic Mail (rule-comments@sec.gov)

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-NYSE-2015-06: Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting New Rule 124 to Conduct a Midday Auction and Amending Rule 104 to Codify the Obligation of Designated Market Makers to Facilitate the Midday Auction

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to comment on the above-referenced proposal by the New York Stock Exchange LLC (“NYSE” or the “Exchange”) with the Securities and Exchange Commission (“Commission”). Under the proposal, NYSE would establish a daily “Midday Auction” in a subset of NYSE-listed securities that have a consolidated average daily trading volume (“CADV”) of 1,000,000 shares or less and have been designated by the NYSE (the “Midday Auction Stocks”). SIFMA supports efforts to improve the trading quality in lower volume securities. However, we believe that when such efforts deviate significantly from established rules, such initiatives must be addressed by the Commission market wide, rather than via rulemaking that is designed to benefit only one market participant.

I. Introduction

The NYSE is proposing to establish an auction mechanism that would conduct one Midday Auction in each Midday Auction Stock per trading day. The NYSE states that the Midday Auction “is intended to consolidate volume, including orders of larger blocks of stock, for price discovery purposes in lower-volume securities to provide market participants with a single-priced execution intraday to supplement the existing opening and closing auctions.”² In

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Securities Exchange Act Release No. 74281 (February 17, 2015), 80 FR 9496 (February 23, 2015).

advance of each Midday Auction, the Exchange would pause trading for a five-minute period on the Exchange and only in the Midday Auction Stocks, in order to provide market participants with an opportunity to enter interest intended for the auction (the “Midday Auction Pause”). During the Midday Auction Pause, the Exchange would suspend automatic executions and publish a zero quote on both the public and proprietary data feeds.

NYSE would maintain existing orders on its order book in the Midday Auction Stocks, but it would stop displaying those orders during the Midday Auction Pause. The NYSE states that, “[i]n order to maximize the interest eligible to participate in the Midday Auction,” the exchange will maintain resting orders on its book that are eligible to participate in a reopening. Further, the Exchange would also accept new orders that are eligible to participate in the Midday Auction. The Exchange notes that it also would accept Market-on-Open (“MOO”) and Limit-on-Open (“LOO”) Orders, which are existing order types available for openings and reopening, during the Midday Auction Pause. Lastly, the Exchange would also accept and process cancellations of new and resting orders during the Midday Auction Pause, which is how the Exchange processes orders during a trading halt or LULD Plan pause.

SIFMA has two initial concerns about the proposal, and a specific policy objection about NYSE’s plans to seek an exemption from Rule 611 of Regulation NMS in connection with the proposal. First, as we have stated previously, broad-based, significant changes to equity market structure should be conducted through Commission rulemaking, not through NMS Plans designed by the exchanges or through a single exchange’s SRO rulemaking process.³ In considering the goals of NYSE’s proposal, the Commission should carry out market structure changes in a manner designed to benefit the entire market, not through a proposal designed to improve the market share for a single market participant.

Second, the impact of the Midday Auction Pause on resting orders at the Exchange raises questions about member firms’ obligations under the limit order display rule. Before approving the proposal, NYSE and the Commission should confirm that a member firm that relies on the NYSE’s displayed order book for compliance with the limit order display rule and whose order is blacked out during the Midday Auction Pause is still considered to be in compliance with the limit order display rule.

SIFMA’s specific policy objection to the proposal is that the NYSE would require an exemption from Rule 611 of Regulation NMS in order to operate the Midday Auction legally in its currently proposed form.⁴ SIFMA believes that if the NYSE proceeds with its proposal, the Midday Auction should be designed so that it operates within and in compliance with existing regulatory requirements. Accordingly, the Commission should not approve the Midday Auction

³ See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Secretary, Securities and Exchange Commission dated December 22, 2014.

⁴ See 80 FR at 9497 n.21.

proposal unless it can operate fully in compliance with Rule 611. If the Commission determines that periodic intraday auctions are a beneficial way to improve trading quality in lower-volume securities, then it should apply the same rules or relief for those auctions to all market participants.

II. Proposal's Request for Exemption from Rule 611 of Regulation NMS

SIFMA opposes granting the NYSE a standalone exemption to the requirements of Regulation 611 of Regulation NMS. In the proposal, the NYSE states that:

The Exchange will be submitting separately a request for exemptive relief pursuant to Rule 611(d) of Regulation NMS that the Middy Auction be exempted from the requirements of Rule 611 of Regulation NMS, 17 CFR 242.600 *et seq.*, because it operates, in substance, in the same way as a single-priced reopening transaction, which is an existing exception to the Order Protection Rule under Rule 611(b)(3).⁵

In our view, the operation of the Middy Auction would be substantially different than the operation of a single-priced reopening transaction. Specifically, a single-priced reopening transaction, as that term is used in Rule 611, is a price-discovery event on a single venue that generally occurs when the entire market has halted trading in that security. In contrast, Middy Auction Stocks would continue to trade on all other venues during the Middy Auction Pause.

The Commission considered these issues when Regulation NMS was adopted. In adopting Regulation NMS, the Commission specifically noted the following:

Some commenters on the Reproposing Release expressed a concern about the scope of the exception for single-priced reopenings in Rule 611(b)(3), particularly in the context of a trading center switching back and forth from automated quotation to manual quotation mode. They asserted that the applicability of the exception to the commencement of trading after a nonregulatory trading halt in one market (such as a trading halt due to an intraday order imbalance) could lead to disruptive trading activity and provide an unfair competitive advantage for the trading center that halted trading. They believed this could create a significant loophole in the protections provided by the Rule. For instance, one commenter expressed concern that a trading center could halt trading and reopen solely to enable it to trade-through other trading centers.⁶

In response, the Commission clarified the narrow situations in which the exception was to apply:

⁵ *Id.*

⁶ Regulation NMS, Exchange Act Release No. 51808 (June 9, 2005) at 94 – 95.

The Commission recognizes the commenters' concern, but emphasizes that the exception will not permit a trading center to declare a trading halt merely to be able to circumvent the operation of the Order Protection Rule upon reopening. The exception applies only to single-priced reopenings and therefore requires that a trading center conduct, pursuant to its rules or written procedures, a formalized and transparent process for executing orders during reopening after a trading halt that involves the queuing and ultimate execution of multiple orders at a single equilibrium price. In addition, the trading center must have formally declared a trading halt pursuant to its rules or written procedures.⁷

Accordingly, it is clear that the Commission intended the Rule 611 exception for reopening auctions to apply in a very specific, limited circumstance. The exception was intended to address trading halts declared to address unusual market, operational, or regulatory situations, not a daily auction mechanism whose purpose is to increase the market share of a single exchange. NYSE should not receive a standalone exemption for the Midday Auction. Either the proposal should be designed to operate fully within the requirements of Rule 611 or the same relief from 611 should be granted to all trading centers. At this point, SIFMA sees no justification in allowing the NYSE to use the Midday Auction mechanism to trade-through the best bid or offer on other trading centers. Additionally, during the proposal's five-minute pause period, resting orders on NYSE order book may become marketable and/or the best price in the market and therefore lose the opportunity to interact with contra side interest on both the NYSE and other external trading venues.

* * *

Thank you for your consideration of our comments. If you have any questions or require further information, please contact me at (202) 962-7383 (tlazo@sifma.org), or Timothy Cummings at (212) 313-1239 (tcummings@sifma.org).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

⁷ *Id.* at 95.

Mr. Brent J. Fields, Securities and Exchange Commission
SIFMA Comment Letter on File No. SR-NYSE-2015-06
March 20, 2015
Page 5

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets