

qualifications for an individual associated person that is required to register as a Proprietary Trader under Exchange Rule 313, including, but not limited to, Market-Makers, proprietary traders and individuals effecting transactions on behalf of other broker-dealers. The Exchange believes the Series 56 addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as Designated Trading Representatives under ISE Rule 801.

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

The proposed rule change does not 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) <sup>11</sup> of the Act and Rule 19b-4(f)(6) <sup>12</sup> thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission. The Commission believes that such waiver will allow the Exchange to decommission the use of its own examination for registration purposes in conjunction with the Exchange's deadline for its membership to have

taken and passed the Series 56 examination. Waiver of the operative delay will help to streamline the exam procedures, while simultaneously protecting investors and the public interest. Therefore, the Commission designates the proposal to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2011-74 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2011-74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-ISE-2011-74 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-29677 Filed 11-16-11; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-65736; File No. SR-NYSE-2011-56]**

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers ("DMMs")**

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 31, 2011, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 amend NYSE Rule 104 to codify certain traditional Trading Floor <sup>3</sup> functions

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NYSE Rule 6A defines the term "Trading Floor" to mean, in relevant part, "the restricted-access

Continued

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

that may be performed by Designated Market Makers (“DMMs”),<sup>4</sup> to make Exchange systems available to DMMs that would provide DMMs with certain market information, to amend the Exchange’s rules governing the ability of DMMs to provide market information to Floor brokers, and to make conforming amendments to other rules. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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

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

#### 1. Purpose

The Exchange proposes to amend NYSE Rule 104 to codify certain traditional Trading Floor functions that may be performed by DMMs; these functions were previously described in the Exchange’s Floor Official Manual. In addition, the Exchange proposes to amend its rules to make Exchange systems available to DMMs that would provide DMMs with certain market information about securities in which the DMM is registered. The Exchange also proposes to amend its rules governing the ability of DMMs to provide market information to Floor brokers. Finally, the Exchange proposes to make clarifying and conforming amendments to other rules.<sup>5</sup>

physical areas designated by the Exchange for the trading of securities.”

<sup>4</sup> NYSE Rule 2(i) defines the term “DMM” to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Rule 2(j) defines the term “DMM unit” as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Rule 98.

<sup>5</sup> The Exchange’s affiliate, NYSE Amex LLC, has submitted substantially the same proposed rule change to the Commission. See SR-NYSEAmex-2011-86.

### Background

On October 24, 2008, the Commission approved, as a pilot program, certain of the rules that govern the current operation of the Exchange.<sup>6</sup> These rules are all elements of the Exchange’s “New Market Model.”<sup>7</sup> The New Market Model pilot rules include NYSE Rule 104, which sets forth certain affirmative obligations of DMMs, the category of market participant that replaced specialists. DMMs have obligations with respect to the quality of the markets in securities to which they are assigned that are similar to certain obligations formerly held by specialists.

In addition to their trading functions, DMMs provide support on the Trading Floor to assist in the efficient operation of the Exchange market and maintain fair and orderly markets. These Trading Floor functions were performed by specialists before the New Market Model was adopted, and the functions were described in the Exchange’s *Floor Official Manual*.<sup>8</sup> Under the New Market Model, there continues to be a need for DMMs to be permitted to perform these Trading Floor functions. As such, the Exchange proposes to codify these Trading Floor functions

<sup>6</sup> See Securities Exchange Act Release No. 48845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (“New Market Model Approval Order”).

<sup>7</sup> The New Market Model pilot is currently scheduled to expire on January 31, 2012. See Securities Exchange Act Release No. 64761 (June 28, 2011), 76 FR 39147 (July 5, 2011) (SR-NYSE-2011-29).

<sup>8</sup> See 2004 *Floor Official Manual, Market Surveillance June 2004 Edition*, Chapter Two, Section I.A. at 7 (“specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities”), Section I.B.3. at 10–11 (“[i]n opening and reopening trading in a listed security, a specialist should \* \* \* [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate” and “[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary”), Section I.B.4. at 11 (“In view of the specialist’s central position in the Exchange’s continuous two-way agency auction market, a specialist should proceed as follows \* \* \* [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.”), and Section I.B.5. at 12 (A specialist should “[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.”). Relevant excerpts of the 2004 *Floor Official Manual* are attached as Exhibit 3 of this filing.

into Rule 104 by adding a new subparagraph (j)(i).<sup>9</sup>

### DMM Trading Floor Functions

There are four categories of Trading Floor functions that DMMs may perform: (1) Maintaining order among Floor brokers manually trading at the DMM’s assigned panel; (2) bringing Floor brokers together to facilitate trading; (3) assisting Floor brokers with respect to their orders; and (4) researching the status of orders or questioned trades.

First, a DMM may maintain order among Floor brokers manually trading at the DMM’s assigned panel. For example, where there is significant agency interest in a security, the DMM may help Floor Officials maintain order by managing trading crowd activity and facilitating the execution of one or more Floor broker’s orders trading at the post.

Second, a DMM may bring Floor brokers together to facilitate trading, which may include the DMM acting as a buyer or seller. This function is consistent with the floor-based nature of the Exchange’s hybrid market. For example, if a DMM is aware that a Floor broker representing buying interest inquired about selling interest in one of his or her assigned securities and later a Floor broker representing selling interest makes an inquiry about buying interest, the assigned DMM may inform the Floor broker representing the buying interest of the other Floor broker’s selling interest. In addition, the DMM itself may provide contra-side interest to a Floor broker representing interest at the post.

Third, DMMs may assist Floor brokers with respect to their orders by providing information regarding the status of a Floor broker’s orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker. For example, if a Floor broker’s handheld device is not operational, the DMM may assist the Floor broker by entering or canceling broker interest on the Floor broker’s behalf.<sup>10</sup>

Fourth, DMMs may research the status of orders or questioned trades. DMMs may do so on their own initiative or at the request of the Exchange or a Floor broker when a Floor broker’s hand-held device is not operational, when there is activity indicating that a potentially erroneous order was entered

<sup>9</sup> The Exchange proposes to redesignate the rule text currently set forth in section (j) as section (k) of Rule 104.

<sup>10</sup> The Exchange maintains records of whether a Floor broker’s order is entered or cancelled by Exchange systems under such circumstances.

or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

#### *DMM Access to Exchange Systems*

The Exchange proposes to amend Rule 104 to add new subparagraph (j)(ii), which would state that the Exchange may make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest;<sup>11</sup> (B) disaggregated information about the price and size of any individual order or Floor broker agency interest file, also known as “e-Quotes,” except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information. For the latter two categories, the DMM would have access to entering and clearing firm information and, as applicable, the badge number of the Floor broker representing the order. The systems would not contain any information about the ultimate customer (*i.e.*, the name of the member or member organization’s customer) in a transaction. Aggregated information about buying and selling interest and post-trade information are currently available to DMMs.

Under the proposed rule change, Exchange systems would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.<sup>12</sup> The Exchange believes that it is appropriate to provide DMMs with this disaggregated order information because the information will assist DMMs in carrying out their Trading

Floor functions as described above. For example, access to the disaggregated order information will increase DMMs’ ability to assist Floor brokers with respect to their orders and researching the status of orders or questioned trades. In addition, providing DMMs with access to the disaggregated order information will contribute to the DMMs’ ability to carry out their responsibility for managing the auction market process at the Exchange, which includes the function of bringing buyers and sellers together to facilitate trading. In addition, the proposed rule change would have no impact on the Exchange’s priority and parity rules; DMM manual transactions would continue to be required to yield to intra-day public customer orders pursuant to Exchange Rule 72(c)(xi). The Exchange further notes that the manner by which the DMM would access disaggregated order information is limited. For example, a DMM can access the disaggregated order information only while located at the post on the Trading Floor. In addition, DMMs’ ability to access the disaggregated order information is largely manual, in that the DMM must query the specific information about a particular security, which limits the number of securities about which disaggregated order information can be accessed at any given time. Exchange systems would not provide any information to the algorithmic trading systems of any DMM unit,<sup>13</sup> and would not support any electronic dissemination of the disaggregated order information to other market participants. The Exchange notes that market participants who do not want the DMM to have access to disaggregated order information have the option to electronically enter dark interest that is not visible to the DMM in disaggregated form. The Exchange also notes that the proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.<sup>14</sup>

<sup>13</sup> The order information in these systems would be available for a DMM to view manually at the post and as such is different from the advance order-by-order information that DMM trading algorithms previously received before implementation of the New Market Model pilot (sometimes referred to as “the look”). Under the proposed rule change, as is the case today, DMM trading algorithms would have the same information with respect to orders entered on the Exchange, Floor broker agency interest files or reserve interest as is disseminated to the public by the Exchange. See Rule 104(b)(iii).

<sup>14</sup> See Proposed NYSE Rule 104(j)(ii).

In addition, the Exchange notes that any non-public market information that a DMM receives through Exchange systems would be subject to specific restrictions as “non-public order information”<sup>15</sup> under Exchange Rule 98. For example, Exchange Rule 98(c)(2)(A) would require DMMs to maintain the confidentiality of any such non-public market information and would prohibit the DMM member organization’s departments, divisions, or aggregation units that are not part of the DMM unit, including investment banking, research, and customer-facing departments, from having access to that information. In addition, Rule 98 sets forth restrictions on access to non-public order information by the off-Floor locations of a DMM unit, including restrictions on the ability of a DMM located on the Trading Floor from communicating directly with off-Floor individuals or systems responsible for making off-Floor trading decisions.<sup>16</sup>

The Exchange believes that the proposed rule change would contribute substantially to the fair and orderly operation of the Exchange Trading Floor, and that the benefits of that contribution would significantly outweigh any incremental benefit to the DMMs by virtue of having access to disaggregated order information. DMM assistance at the post through the performance of the Trading Floor functions is an invaluable resource to minimize any disruption to the market, particularly if the Exchange is experiencing a systems issue; the Exchange systems that provide disaggregated order information play a pivotal role in that assistance, for example by allowing DMMs to enter or cancel orders on behalf of Floor brokers. Allowing DMMs to have access to those Exchange systems to perform the Trading Floor functions is more efficient than diverting Exchange resources to attend to individual Floor broker issues, particularly when the DMMs are ready

<sup>15</sup> NYSE Rule 98(b)(7) defines the term “non-public order” to mean “any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®.”

<sup>16</sup> See Rules 98(d)(2)(B)(i)–(iii), (f)(1)(A)(i)–(ii), and (f)(3)(C)(ii). In addition, Rule 98(c)(2)(A)(ii) provides that a DMM may make available to a Floor broker associated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.

<sup>11</sup> Exchange systems make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve Orders, including the reserve portion; (c) all displayable Floor broker agency interest files (“e-Quotes”); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

<sup>12</sup> The Exchange previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchange stopped making such information available to DMMs on January 19, 2011. See Information Memo 11–03.

and able to perform the same functions. In contrast, the proposed rule change would provide DMMs with a disaggregated format of information that they already have access to on an aggregated basis. Any potential value to having order information on a disaggregated basis is mitigated by the fact that DMMs only have information about orders at the Exchange, which represent just a portion of the overall volume of trading in Exchange-listed stocks across the market. The information is likely to be stale upon receipt to the DMMs, thereby diminishing any likelihood that the information would be useful to DMMs in connection with their electronic or algorithmic trading. For example, the DMMs would have to use a manual process to access the information, the DMMs' access to disaggregated information at any given time would be limited to a single stock, and the information would not be dynamically updated to the DMM, in real time or otherwise. In addition, as described above, all intra-day manual trades entered by the DMM yield to public orders pursuant to Rule 72 and DMMs are restricted from sharing order information pursuant to Rule 98, both of which limit any potential for the DMMs to use the disaggregated order information in connection with their manual trading.

#### *Conforming Amendments*

To reflect the information that would be available to DMMs through Exchange systems, the Exchange proposes amendments to Rules 70(e), (f) and (i) and 70.25(a)(vii) to specify which information is available to a DMM through Exchange systems. The Exchange also proposes changes to Rule 70 to specify what information about e-Quotes is available to the DMM.

In addition, the Exchange proposes to delete Rule 104(a)(6), which currently provides that DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

#### *Ability of DMMs To Provide Market Information on the Trading Floor*

The Exchange proposes to modify the terms under which DMMs would be permitted to provide market information

to Floor brokers and visitors on the Trading Floor. Specifically, Rule 104(j)(iii) would permit a DMM to provide the market information to which he or she has access under proposed Rule 104(j)(ii) to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the Trading Floor for the purpose of demonstrating methods of trading. This aspect of the proposal builds on and modifies current NYSE Rule 115, and the Exchange therefore proposes to delete NYSE Rule 115, which covers the same subject.<sup>17</sup>

Currently, NYSE Rule 115 provides that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the Trading Floor. This aspect of current Rule 115 would be replicated in proposed Rule 104(j)(iii)(B). Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System ("ITS"). This text is obsolete as the ITS Plan has been eliminated and therefore would not be included in amended Rule 104.<sup>18</sup> Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule ("CCS") interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe<sup>19</sup> in the normal course of business.

Proposed Rule 104(j)(iii) would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under Rule 115 but also with the disaggregated and post-

trade order information described above.<sup>20</sup> Broadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate trading. In addition, NYSE notes that Rule 115 allowed Exchange specialists to provide disaggregated order information to Floor brokers prior to adoption of the Hybrid Market.<sup>21</sup> Moreover, as noted above, both Floor brokers and off-Floor participants have the ability to enter partially or completely "dark" orders that are not visible to the DMM, and DMMs therefore would be unable to disseminate information about such "dark" orders or the dark portion of the orders in response to an inquiry from a Floor broker. When providing information, the individual DMM is responsible for fairly and impartially providing accurate and timely information to all inquiring Floor brokers about buying and selling interest in his or her assigned security.

Proposed Rule 104(j)(iii) also would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided "in response to an inquiry from a member conducting a market probe in the normal course of business," as currently provided in Rule 115. The Exchange believes that the term "market probe" no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the Exchange believes that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. In addition, the rule would specify that a Floor broker may not submit an inquiry to the DMM by electronic means and that the DMM may not use electronic means to transmit market information to a Floor broker in response an inquiry. Under the

<sup>17</sup> Rule 115 will be redesignated as "Reserved." The Exchange further proposes to make conforming amendments to Rules 13, 98 Former, 104(a)(6), and 750.

<sup>18</sup> See Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan).

<sup>19</sup> Generally, a market probe refers to when a Floor broker is seeking to ascertain the depth of the market in a security to determine at what price point a security may trade. However, it is a term of art whose meaning is not codified.

<sup>20</sup> Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

<sup>21</sup> See NYSE Regulation Information Memo 05-5 (stating that, under Rule 115, specialists may disclose the identity of the members or member organizations representing any orders entrusted to the specialist). The Exchange amended Rule 115 in connection with the Hybrid Market because at that time, there was no way for Floor brokers to enter fully dark electronic interest. Now that Exchange systems can accept fully dark electronic interest from both Floor brokers and off-Floor participants, the Hybrid Market change to Rule 115 has been obviated and the rule can return to its former status.

proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

The Exchange believes that providing Floor brokers with access to the disaggregated order information would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions. In particular, the ability of Floor brokers to receive the disaggregated order information should, in turn, enhance their ability to facilitate transactions for their customers by identifying market participants with trading interest that could trade with the Floor brokers' customers. Floor brokers have historically served this role on behalf of their customers, which include institutional clients and block-trading desks, and they continue to perform this agency function today. The Exchange notes that Floor brokers continue to be subject to their existing obligations with respect to Floor trading and access to information. In particular, Floor brokers remain subject to the restrictions in Section 11(a) of the Securities Exchange Act of 1934 (the "Act") and the rule thereunder, which effectively prohibit Floor brokers from effecting transactions for their own account, the account of an associated person, or an account with respect to which the member, member organization, or an associated person thereof exercises investment discretion.<sup>22</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>23</sup> in general, and Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change clarifies that DMMs may perform certain defined Trading Floor functions, which were previously performed by specialists, in furtherance of the efficient, fair, and orderly operation of the Exchange. In addition, increasing the amount of

information, including disaggregated order information, that a DMM is permitted to view and provide to Floor brokers would further the ability of DMMs to carry out the defined Trading Floor functions and, as a result, is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the Exchange, in particular by facilitating the bringing of buyers and sellers together. Although a vast majority of the transactions executed on the Exchange are automated, Floor brokers continue to play an important role for customers in those transactions that require the expertise of a professional trading floor agent, including engaging in price discovery and sourcing liquidity for block transactions. While the disaggregated order information that would be available to DMMs and Floor brokers under the proposed rule change is important to them in carrying out their unique roles in a floor trading environment, the Exchange believes this information would not be material to market participants executing automated orders. In addition, the means of access by DMMs and Floor brokers to the disaggregated order information is largely manual. Accordingly, the Exchange believes that access to disaggregated order information as set forth in this proposed rule change provides no unfair advantage to DMMs or Floor brokers. In addition, as noted above, DMMs would be specifically prohibited from using the market information available through Exchange systems for any purpose that would violate Exchange rules or federal securities laws or regulations.

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

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

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-56 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NYSE-2011-56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

<sup>22</sup> See also NYSE Rule 90.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

available publicly. All submissions should refer to File Number SR–NYSE–2011–56 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011–29679 Filed 11–16–11; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65737; File No. SR–FINRA–2011–066]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Audit Trail System Definitions of Index Arbitrage Trade and Program Trade

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 4, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA filed the proposal as a “non-controversial” proposed rule change pursuant to 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(6)<sup>4</sup> thereunder. 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

FINRA is proposing to amend the definitions of “Index Arbitrage Trade” and “Program Trade” in FINRA Rule 7410 (Definitions) to reflect the deletion of NYSE Rule 132B and the adoption of NYSE Rule 7410.<sup>5</sup>

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

FINRA is filing the proposed rule change to update the definitions of “Index Arbitrage Trade” and “Program Trade” found in FINRA Rule 7410.

The definitions of “Index Arbitrage Trade” and “Program Trade” in FINRA Rule 7410(f) and (m), respectively, incorporate by reference the definitions of “index arbitrage” and “program trading” in NYSE Rule 132B. In connection with the extension of FINRA’s Order Audit Trail System (“OATS”) rules (“OATS Rules”) to all NMS stocks, the NYSE filed with the SEC a proposed rule change to delete NYSE Rules 132A, 132B, and 132C (the NYSE’s Order Tracking System, or OTS, Rules) and to adopt, with minor conforming changes, the text of the FINRA Rule 7400 Series, the OATS Rules.<sup>6</sup> As part of that rule change, the NYSE relocated its definitions of “index arbitrage” and “program trading” from NYSE Rule 132B.10 to NYSE Rule 7410(g) and (m). Because the OTS Rules, including NYSE Rule 132B, will no longer be in the NYSE Rulebook after the OATS Rules are extended to all NMS stocks on November 28, 2011,<sup>7</sup> FINRA is amending the definitions of “Index Arbitrage Trade” and “Program Trade” in paragraphs (f) and (m) of FINRA Rule 7410 to refer to new NYSE Rule 7410 rather than NYSE Rule 132B.

<sup>6</sup> See Securities Exchange Act Release No. 65523 (October 7, 2011); 76 FR 64154 (October 17, 2011).

<sup>7</sup> FINRA began phasing in the extension of the OATS Rules to all NMS stocks on October 17, 2011. See Securities Exchange Act Release No. 65442 (September 29, 2011); 76 FR 61773 (October 5, 2011). The phase-in will be completed on November 28, 2011. See *OATS Reporting Technical Specifications*, at ii (ed. May 3, 2011). The NYSE is phasing out the OTS requirements on the same timetable as FINRA is phasing in the OATS requirements. See Securities Exchange Act Release No. 65523, n.16 (October 7, 2011); 76 FR 64154, 64156 n.16 (October 17, 2011).

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA’s rules by updating the cross-references to the new NYSE rule. FINRA also believes that the proposed rule change will promote the harmonization of industry rules by ensuring that the definitions of “Program Trade” and “Index Arbitrage Trade” in the OATS Rules will remain consistent with the analogous definitions in the NYSE rules.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b–4(f)(6) thereunder.<sup>10</sup>

<sup>8</sup> 15 U.S.C. 78o–3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the

<sup>25</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 65523 (October 7, 2011); 76 FR 64154 (October 17, 2011).