

All submissions should refer to File Number SR-EDGX-2015-26. 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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 available publicly. All submissions should refer to File Number SR-EDGX-2015-26 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,¹⁵

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75153; File No. SR-NYSE-2015-26]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Making Permanent the Rules of the New Market Model Pilot and the Supplemental Liquidity Providers Pilot

June 11, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder,³

notice is hereby given that on June 4, 2015, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 the Exchange. 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 make permanent the rules of the New Market Model Pilot and the Supplemental Liquidity Providers Pilot. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, 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, 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 make permanent the rules of New Market Model Pilot ("NMM Pilot") and the Supplemental Liquidity Providers Pilot ("SLP Pilot," collectively "Pilots"). The Pilots are currently scheduled to expire upon the earlier of July 31, 2015 or Securities and Exchange Commission ("SEC" or "Commission") approval to make the Pilots permanent.⁴

Background

In October 2008, the NYSE implemented significant changes to its market rules, execution technology, and

the rights and obligations of its market participants, all of which were designed to improve execution quality on the Exchange. Certain of the enhanced market model changes were implemented through the NMM Pilot.⁵ Specifically, and as described in greater detail below, Rules 72, 104 and the provisions of Rule 1000 relating to the Capital Commitment Schedule are the pilot rules associated with the NMM Pilot.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker ("DMM").⁶ DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement⁷ in their assigned securities and no longer have negative obligations. DMMs are also no longer agents for public customer orders.⁸ DMM obligations under the NMM Pilot are set forth in Rule 104.

In addition, the Exchange implemented a system change that allowed a DMM to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS") and is set forth in Rule 1000. CCS provides the Exchange systems, formerly referred to as the "Display Book"⁹ with the amount of shares that the DMM is willing to trade at price points outside,

⁵ See Securities Exchange Act No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) ("NMM Pilot Approval Order").

⁶ See Rule 103.

⁷ See Rule 104.

⁸ See Rule 60; see also Rules 104 and 1000.

⁹ The Exchange's Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems. Because the Exchange has retired the actual system referred to as the "Display Book," but not the functionality associated with the Display Book, the Exchange proposes to replace all references to the term "Display Book" in Rules 104 and 1000 with references either to the term (i) "Exchange systems" when use of the term refers to the Exchange systems that receive and execute orders, or (ii) "Exchange book" when use of the term refers to the interest that has been entered and ranked in Exchange systems.

⁴ See Securities Exchange Act Nos. 73919 (December 23, 2014), 79 FR 78930 (December 31, 2014) (SR-NYSE-2014-71) ("NMM Pilot extension filing"); 73945 (December 24, 2014), 80 FR 58 (January 2, 2015) (SR-NYSE-2014-72) ("SLP Pilot extension filing").

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

at, and inside the Exchange Best Bid or Best Offer (“BBO”). CCS interest is separate and distinct from other DMM interest in that it is generally interest of last resort.

The NMM Pilot further modified the priority of trading interest, set forth in Rule 72, which rewards displayed orders that establish the BBO by giving such orders priority in execution against incoming orders. During the operation of the NMM Pilot, an order or portion thereof that establishes priority, retains that priority until such order or portion of such order is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

In addition, the NMM Pilot modified how orders are allocated among market participants. Before the NMM Pilot, the Exchange operated on a parity allocation model whereby executed orders were allocated on parity among market participants, which included each Floor broker and the orders collectively represented in Exchange systems. Because specialists on the Exchange had both agency obligations to public customer orders and negative obligations, their executions yielded to public customer orders. Under the NMM Pilot, because DMMs do not have either agency obligations or negative obligations, DMMs are an individual market participant eligible for allocation under the Exchange’s parity allocation. Accordingly, for purposes of share allocation in an execution, Rule 72(c)(ii) provides that each Floor broker, the DMM, and orders collectively represented in Exchange systems (*i.e.*, “Book Participant”) ¹⁰ constitute individual participants for purposes of parity allocation of executed orders.

In connection with the DMM Pilot, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs. ¹¹ Rule 107B governs the SLP Pilot.

The Pilots were originally scheduled to end on October 1, 2009, or such earlier time as the Commission determined to make the Pilots’ rules permanent. The Exchange filed to extend the operation of the Pilots on several occasions in order to prepare this rule filing. ¹²

¹⁰ The orders represented in the Book Participant in aggregate constitute a single participant.

¹¹ See Securities Exchange Act No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (Notice of Filing” [sic]).

¹² See NMM pilot extension filing and SLP pilot extension filing, *supra* n. 3 [sic].

Description of Pilot Rules That Would Become Permanent

Rule 104

Current Rule 104, as amended since 2008, sets forth DMM obligations. Under Rule 104(a), DMMs registered in one or more securities traded on the Exchange are required to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM include:

- Assisting the Exchange by providing liquidity as needed to provide a reasonable quotation and by maintaining continuous two-sided quotes with a displayed size of at least one round lot that meets certain metrics as set forth in the rule;
- Facilitating openings and re-openings in assigned securities, which may include supplying liquidity as needed; and
- Facilitating the close of trading for assigned securities, which may include supplying liquidity as needed. ¹³

The Rule 104(a)(1) quoting requirements applicable to DMMs are two-fold. First, with respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the National Best Bid (“NBB”) and National Best Offer (“NBO”) (collectively, “inside”) at least 15% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume (“CADV”) of less than one million shares (“Less Active Securities”), and at least 10% for securities in which the DMM is registered with a CADV equal to or greater than one million shares (“More Active Securities”). ¹⁴ These DMM quoting obligations set forth in Rule 104(a)(1)(A) are unique to the Exchange.

¹³ In 2015, the Exchange eliminated liquidity replenishment points (“LRP”) and the “gap” quote procedures and amended Rule 104(a) to eliminate the former DMM obligations to facilitate trading when an LRP was reached or the gap quote procedure was being used. See Securities Exchange Act Release No. 74063 (Jan. 15, 2015), 80 FR 3269 (Jan. 22, 2015) (Notice of Filing).

¹⁴ In 2009, the Exchange amended Rule 104(a)(1) to increase the amount of time that a DMM unit must maintain a bid and offer at the inside from 10% to 15% for Less Active Securities and from 5% to 10% for More Active Securities. See Securities Exchange Act Release No. 60595 (August 31, 2009), 74 FR 46261 (September 8, 2009) (SR–NYSE–2009–91) (Notice of Filing) (“DMM quoting requirement filing”). In 2011, the Exchange amended Rule 104(a)(1) to specify that the quoting percentage would be based on the consolidated average daily volume of a security, rather than the average daily volume of the security on the Exchange. See Securities Exchange Act Release No. 65865 (December 2, 2011), 76 FR 76799 (December 8, 2011) (SR–NYSE–2011–58) (Notice of Filing).

Second, DMM units are subject to the two-sided quoting obligations set forth in Rule 104(a)(1)(B), which are the pricing obligations applicable to all equity market makers market-wide to maintain a bid and offer a designated percentage away from the NBB and NBO at all times. ¹⁵

Under Rule 104(b), DMM units are permitted to use algorithms for quoting and trading consistent with NYSE and SEC rules. Exchange systems enforce the proper sequencing of incoming orders and algorithmically-generated messages. Except as provided for in the rule, the DMM unit’s system employing algorithms has access to information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest, to the extent such information is publicly available. DMM unit algorithms receive 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 and receive such information no sooner than it is available to other market participants. ¹⁶ A DMM unit’s algorithm may submit trading interest via CCS interest in accordance with Rule 1000.

Under Rule 104(c), a DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.

Under Rule 104(d), a DMM unit may provide algorithmically generated price improvement to all or part of an incoming order that can be executed at or within the BBO through the use of CCS interest. Any orders eligible for execution in the Exchange’s book at the price of the DMM unit’s interest trade on parity with such interest, as does any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit’s interest.

Under Rule 104(e), DMM units must provide contra-side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening, and closing transactions but remain unpaired after

¹⁵ See Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR–NYSE–2010–69) (Notice of Filing).

¹⁶ In 2013, the Exchange amended Rules 104 and 123C to specify that closings may be effectuated manually or electronically. See Securities Exchange Act Release No. 71086 (December 16, 2013), 78 FR 77186 (December 20, 2013) (SR–NYSE–2013–79) (Notice of Filing). As part of that filing, the Exchange amended Rules 104(a)(3) and 104(b) to provide that the DMM algorithm would have access to aggregate order information relating to Reserve Interest eligible to participate in a manual execution.

the DMM has paired all other eligible round lot sized interest.

Rule 104(f) sets forth the functions of DMMs. First, any member who expects to act as a DMM in any listed stock must be registered as a DMM in accordance with Rule 103. Second, a DMM must maintain, insofar as reasonably practicable, a fair and orderly market on the Exchange in the stocks in which he or she is so acting. Third, the Exchange supplies DMMs with suggested Depth Guidelines for each security in which a DMM is registered, and DMMs are expected to quote and trade with reference to the Depth Guidelines. Finally, DMMs are designated as market makers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

Rule 104(g) governs transactions by DMMs. Transactions on the Exchange by a DMM for the DMM's account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Rule 104(g) describes certain permitted transactions, including neutral transactions and non-conditional transactions, but prohibits certain other transactions. Specifically, except as otherwise permitted by Rule 104, during the last ten minutes prior to the close of trading, a DMM with a long (short) position in a security is prohibited from making a purchase (sale) in such security that results in a new high (low) price on the Exchange for the day at the time of the DMM's transaction.

Rule 104(h) addresses DMM transactions in securities that establish or increase the DMM's position. A "Conditional Transaction" is a DMM's transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange-published bid or offer. Certain Conditional Transactions may be made by a DMM without restriction as to price if they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. The Exchange issues guidelines, called price participation points ("PPP"), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. Immediate re-entry is required after certain Conditional Transactions. However, certain other Conditional Transactions may be made without restriction as to price and Rule 104(i) provides that the re-entry obligations following such Conditional Transactions would be the same as the

re-entry obligations for non-conditional transactions," as set forth in Rule 104(g).

Rule 104(j), which was added in 2013,¹⁷ permits a DMM to perform the following Trading Floor functions:

- Maintain order among Floor brokers manually trading at the DMM's assigned panel;

- Bring Floor brokers together to facilitate trading, which may include the DMM as a buyer or seller;

- Assist a Floor broker with respect to an order 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; and

- Research the status of orders or questioned trades on his or her own initiative or at the request of the Exchange or a Floor broker when a Floor broker's handheld device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

The rule also permits the Exchange to make systems available to a DMM at the post that display the following information about securities in which the DMM is registered: (A) Aggregated buying and selling interest; (B) the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display excludes any order or portion thereof that a market participant has elected not to display to a DMM; and (C) post-trade information. A DMM may not use any such information in a manner that would violate Exchange rules or federal securities laws or regulations. The DMM may provide market information that is available to the DMM at the post to (i) respond to an inquiry from a Floor broker in the normal course of business or (ii) visitors to the Trading Floor for the purpose of demonstrating methods of trading. However, a Floor broker may not submit an inquiry pursuant to this provision by electronic means and the DMM may not use electronic means to transmit market information to a Floor broker in response to a Floor broker's inquiry pursuant to this provision.

Rule 104(k) provides that in the event of an emergency, such as the absence of the DMM, or when the volume of business in the particular stock or stocks

is so great that it cannot be handled by the DMMs without assistance, a Floor Governor may authorize a member of the Exchange who is not registered as a DMM in such stock to act as temporary DMM for that day only.

Rule 1000

The provisions of current Rule 1000 relating to CCS, as amended since 2008, and which are operating as part of the NMM Pilot, are set forth sections (d)–(g) of Rule 1000.

Rule 1000(d) provides that for each security in which it is registered, a DMM unit may place within Exchange systems a pool of liquidity to be available to fill or partially fill¹⁸ incoming orders in automatic executions, which is CCS. CCS is designed to be a DMM unit's commitment to trade a specified number of shares at specified price points in reaction to incoming contra-side interest. As noted above, CCS interest is used to trade at the BBO, at prices better than the BBO, and at prices outside the BBO. CCS interest supplements displayed and non-displayed interest of the DMM in Exchange systems. CCS interest must be for a minimum of one round lot of a security and entered at price points that are at, inside, or away from the BBO.

Rule 1000(e) governs executions at and outside the BBO, and specifies how CCS interest would interact with such executions. For executions at the BBO, CCS interest would yield to all other interest at that price point. For executions outside the BBO, *i.e.*, sweeps, Rule 1000(e)(iii) specifies how CCS interest could participate to provide price improvement to the residual of an order that sweeps. As provided for in the rule, if an order is not executed at full at the Exchange BBO, Exchange systems will calculate the unfilled volume of the contra-side order and review the additional displayed and non-displayed interest, including CCS interest and protected quotes on away markets, to determine the price at which the remaining volume of the contra-side order can be executed in full (the "completion price"). Exchange systems will evaluate the price at which the maximum volume of CCS interest exists to trade, and execute the incoming order one

¹⁷ See Securities Exchange Act Release No. 71175 (December 23, 2013), 78 FR 79534 (December 30, 2013) (SR-NYSE-2013-21) (Order approving adoption of Rule 104(j)).

¹⁸ The original NMM Pilot permitted CCS to participate only if it would fill an incoming order. In 2009, the Exchange amended Rule 1000 to provide that Exchange systems would access CCS interest to participate in executions when the incoming order would only be partially executed. See Securities Exchange Act Release No. 60671 (September 15, 2009), 74 FR 48327 (September 22, 2009) (SR-NYSE-2009-71) ("CCS Partial Fill Approval Order").

minimum price variation (as the term is defined in Rule 62) better than that price, which is how CCS provides price improvement. If an order cannot be executed in full because of the order's limit price, or because of an immediate-or-cancel time-in-force, CCS interest is available to partially fill the incoming order.

Rule 1000(f) specifies how CCS interest may provide price improvement inside the BBO with interest arriving in the Exchange market that:

- Will be eligible to trade at or through the BBO;
- Will be eligible to trade at the price of interest in Exchange systems representing non-displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest ("hidden interest") or MPL Orders; or
- Will be eligible to route to away market interest for execution if [sic] the total volume of CCS interest, plus d-Quote interest in Floor broker agency interest files, plus any interest represented by hidden interest, would be sufficient to fully complete the arriving interest at a price inside the BBO. In such an instance, the Exchange systems determine the price point inside the BBO at which the maximum volume of CCS interest trades, taking into account the volume, if any, available from d-Quotes and hidden interest. The arriving interest is executed at that price, with all interest (CCS, d-Quote, hidden interest) trading on parity.

Under Rule 1000(g), CCS interest may trade with non-marketable¹⁹ interest where such non-marketable interest betters the BBO (or cancels in the case of an arriving IOC order) if the incoming interest may be executed in full by all interest available in the Exchange's book, including CCS interest and d-quotes. Such trade takes place at the limit price of the arriving non-marketable interest. All interest trading with the incoming interest trades on parity.

Rule 72

The priority of bids and offers and allocation of executions is governed by Rule 72, as amended since 2008. Under Rule 72(a), when a bid or offer, including pegging interest,²⁰ is

¹⁹ "Non-marketable" means trading interest (*i.e.*, displayable and non-displayable) that is at a price higher than the current Exchange bid (but below the current Exchange offer) or lower than the current Exchange offer (but above the current Exchange bid), including better bids and offers on other market centers. See Rule 1000(g)(1).

²⁰ In 2012, the Exchange amended Rule 72(a) to specify that pegging interest may be considered

established as the only displayable²¹ bid or offer made at a particular price and such bid or offer is the only displayable interest when such price is or becomes the BBO (the "setting interest"), such setting interest is entitled to priority for allocation of executions at that price as described in the rule, subject to the provisions below:

(A) Odd-lot orders, including aggregated odd-lot orders that are displayable, are not eligible to be setting interest.²²

(B) If at the time displayable interest of a round lot or greater becomes the BBO, there is other displayable interest of a round lot or greater, including aggregated odd-lot orders that are equal to or greater than a round lot, at the price that becomes the BBO, no interest is considered to be a setting interest, and, therefore, there is no priority established.

(C) If at the time displayable interest of a round lot or greater becomes the BBO, there is other displayable interest, the sum of which is less than a round lot, at the price that becomes the BBO, the displayable interest of a round lot or greater is considered the only displayable bid or offer at that price point and is therefore established as the setting interest.

(D) If executions decrement the setting interest to an odd-lot size, a round lot or partial round lot order that joins such remaining odd-lot size order is not eligible to be the setting interest.

(E) If as a result of cancellation, interest is or becomes the single displayable interest of a round lot or greater at the BBO, it becomes the setting interest.

(F) Only the portion of setting interest that is or has been published in the BBO is entitled to priority allocation of an execution. That portion of setting interest that is designated as reserve

setting interest. See Securities Exchange Act Release No. 68302 (November 27, 2012), 77 FR 71658 (December 3, 2012) (SR-NYSE-2012-65) (Notice of Filing) ("Pegging filing").

²¹ As used in this rule, the term "displayable" means that portion of interest that could be published as, or as part of, the BBO, including pegging interest. Displayable odd-lot orders are published as part of the BBO if, when aggregated with other interest available for execution at that price point, the sum of the odd-lot order and other interest available at that price point would be equal to or greater than a round lot. The term "displayed interest" includes that part of an order that is published as, or as part of, the BBO, which may include one or more odd-lot orders.

²² In 2010, the Exchange amended its rules, including Rule 72, to incorporate the receipt and execution of odd-lot interest in the round-lot market and decommission the former Odd Lot System. See Securities Exchange Act Release No. 62578 (July 27, 2010), 75 FR 45185 (August 2, 2010) (SR-NYSE-2010-43 and SR-NYSEAmex-2010-53) ("Odd-lot Approval Order").

interest and therefore not displayed at the BBO (or not displayable if it becomes the BBO) is not eligible for priority allocation of an execution irrespective of the price of such reserve interest or the time it is accepted into Exchange systems. However, if, following an execution of part or all of setting interest, such setting interest is replenished from any reserve interest, the replenished volume of such setting interest is entitled to priority if the setting interest is still the only interest at the BBO.

(G) If non-pegging interest becomes the BBO, it is considered the setting interest even if pegging interest is pegging to such non-pegging interest, and it retains its priority even if subsequently joined at that price by a pegging interest.

Under Rule 72(b), once priority is established by the setting interest, such setting interest retains that priority for any execution at that price when that price is at the BBO. If executions decrement the setting interest to an odd-lot size, such remaining portion of the setting interest retains its priority for any execution at that price when that price is the BBO. For any execution of setting interest that occurs when the price of the setting interest is not the BBO, the setting interest does not have priority and is executed on parity.

Priority of setting interest is not retained after the close of trading on the Exchange or following the resumption of trading in a security after a trading halt in such security has been invoked pursuant to Rule 123D or following the resumption of trading after a trading halt invoked pursuant to the provisions of Rule 80B. Priority of the setting interest is not retained on any portion of the priority interest that is routed to an away market and is returned unexecuted unless such priority interest is greater than a round lot and the only other interest at the price point is odd-lot orders, the sum of which is less than a round lot.

Under Rule 72(c), executions are allocated as follows. An automatically executing order trades first with the displayed bid (offer) and, if there is insufficient displayed volume to fill the order, trades next with reserve interest. All reserve interest trades on parity. For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to as "Book Participant") constitute individual participants. The orders represented in the Book Participant in aggregate constitute a single participant and are allocated

shares among such orders by means of time priority with respect to entry.

In any execution at the BBO, a participant who is the setting interest receives 15% of the volume of such executed amount or a minimum of one round lot, whichever is greater, until such setting interest has received a complete execution of its eligible priority interest. Setting interest that is decremented to an odd-lot size receives 15% of the volume of such incoming interest rounded up to the size of the setting interest, or the size of the incoming interest, whichever is less. Following the allocation of an execution to setting interest as provided above, the remainder of the executed volume is allocated to each participant on parity. The participant with the priority interest (the setting interest) is included in such parity allocation. If there is no setting interest for an execution at the BBO, allocation of the executed volume is on parity by participant except as otherwise set forth in the rule. When an execution occurs at the BBO, interest that is displayed in the BBO is allocated before any interest that is not displayed. In allocating an execution that involves setting interest, whether such execution takes place at the BBO or otherwise, the volume allocated to the setting interest is allocated to the interest in the setting interest that is entitled to priority first.

Shares are allocated in round lots or the size of the order if less than a round lot. If the number of shares to be executed at a price point is insufficient to allocate round lots to all the participants eligible to receive an execution at that price point, or the size of the order if less than a round lot, Exchange systems create an allocation wheel of the eligible participants at that price point and the available round lot shares are distributed to the participants in turn. If an odd-lot sized portion of the incoming order remains after allocating all eligible round lots, the remaining shares are allocated to the next eligible participant in less than a round lot. On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first on a time basis. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels interest and then rejoins, that participant joins as the last position on the wheel at that time. If an odd-lot allocation completely fills the interest of a participant, the wheel moves to the next participant. The allocation wheel also moves to the next participant where Exchange systems execute remaining displayable odd-lot interest prior to

replenishing the displayable quantity of a participant.

When an execution occurs outside the BBO, the interest that is displayable is allocated before any interest that is non-displayable (*i.e.*, reserve interest). All interest that is displayable is on parity among individual participants' displayable interest. All interest that is non-displayable is on parity among individual participants' non-displayable interest. Incoming orders eligible for execution at price points between the BBO trade with all available interest at the price. All NYSE interest available to participate in the execution (*e.g.*, d-quotes, s-quotes, Reserve Orders, and CCS interest) trade on parity.

DMM interest added intra-day to participate in a verbal transaction with a Floor broker or during a slow quote is allocated shares only after all other interest eligible for execution at the price point is executed in full. DMM interest added at the time of the slow quote or when verbally trading with a Floor broker not executed during the transaction is cancelled.²³ However, s-Quotes, if any, representing DMM interest present at the price point prior to the verbal transaction with a Floor broker or during a slow quote receive an allocation on parity as described above. An order that is modified to reduce the size of the order retains the time stamp of original order entry. An order modified in any other way, such as increasing the size or changing the price of the order, receives a new time stamp.²⁴

Under Rule 72(d), when a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are "block" orders (*i.e.*, at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less) and are not for the account of such member or member organization, an account of an associated person, or an account with respect to which the member, member organization, or associated person thereof exercises investment discretion, then the member may "cross" those orders at a price at or within the BBO.²⁵

²³ When the Exchange adopted the NMM Pilot in 2008, all DMM interest was on parity. In 2009, the Exchange amended Rule 72 to add new subsection (c)(xi) to the rule to remove parity for DMM interest that verbal transactions with a Floor broker or during a slow quote. See Securities Exchange Act Release No. 60287 (July 10, 2009), 74 FR 34817 (July 17, 2009) (SR-NYSE-2009-69) (Notice of Filing).

²⁴ See Pegging Filing, *supra* n. 18 [sic] (amending Rule 72(c) to specify how order modifications impact the time stamp of an order).

²⁵ In 2011, the Exchange amended Rule 72(d) regarding agency cross transactions to (i) change the minimum size of a block order under the rule from

The member's bid or offer is entitled to priority at such cross price, irrespective of pre-existing displayed bids or offers on the Exchange at that price. The member must follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other displayed market interest on the Exchange at that price before trading with any part of the cross transaction. Following a transaction at the improved price, the member with the agency cross transaction must follow the crossing procedures of Rule 76 and complete the balance of the cross. No member may break up the proposed cross transaction, in whole or in part, at the cross price. No DMM may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant Rule 72(d). A transaction effected at the cross price in reliance on this provision is printed as "stopped stock." When a member effects a transaction under this provision, the member must, as soon as practicable after the trade is completed, complete documentation of the trade as the Exchange requires.

Rule 107B

Rule 107B, as amended, governs the SLP Pilot. Under current Rule 107B(a), an SLP is defined as a member organization that electronically enters proprietary orders or quotes from off the Floor of the Exchange into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the National Best Bid ("NBB") or the National Best Offer ("NBO") in each assigned security in round lots averaging at least 10% of the trading day and for all assigned SLP securities²⁶ and to add liquidity of an ADV of more than a specified percentage of

25,000 to 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less, and (ii) conform Rule 72(d) to Rule 90 to permit a Floor broker to represent a Rule 72(d) crossing transaction on behalf of an unaffiliated member or member organization. See Securities Exchange Act Release No. 64334 (April 25, 2011), 76 FR 24078 (April 29, 2011) (SR-NYSE-2011-18) (Notice of Filing).

²⁶ The SLP Pilot originally required an SLP to maintain a bid and/or offer at the NBB or NBO averaging at least 5% of the trading day. Effective September 25, 2010, the Exchange increased this quoting requirement to require SLPs to maintain a bid and/or offer at the NBB or NBO at least 10% of the trading day. See Securities Exchange Act Release No. 62791 (August 30, 2010) 75 FR 54411 (September 7, 2010) (SR-NYSE-2010-60) (Notice of Filing) ("SLP 2010 Filing").

consolidated average daily volume (“CADV”) in all NYSE-listed securities, as set forth in the Exchange’s Price List, on a monthly basis.²⁷ An SLP can be either a proprietary trading unit of a member organization (“SLP-Prop”) or a registered market maker at the Exchange (“SLMM”).²⁸

Under Rule 107B(b), when an SLP posts liquidity on the Exchange and such liquidity is executed against an inbound order, the SLP receives a financial rebate for that executed transaction as set forth in the Exchange’s Price List, subject to the non-regulatory penalty provision described in Rule 107B(k).²⁹ The SLP receives credit toward the financial rebate for executions of displayed and non-displayed liquidity (e.g., reserve and dark orders) posted in round lots in its assigned securities only.

Under Rule 107B(c), to qualify as an SLP-Prop, a member organization must have:

- (1) Adequate technology to support electronic trading through the systems and facilities of the Exchange;
- (2) mnemonics that identify to the Exchange SLP-Prop trading activity in assigned SLP securities;
- (3) adequate trading infrastructure and staff to support SLP trading activity;
- (4) quoting and volume performance that demonstrates an ability to meet the 10% average quoting requirement in each assigned security and the ADV requirement of more than a specified percentage of CADV in all NYSE-listed securities for all assigned SLP securities on a monthly basis;
- (5) a disciplinary history that is consistent with just and equitable business practices; and

²⁷ In the SLP 2010 Filing, the Exchange introduced a monthly volume requirement for SLPs of an average daily volume (“ADV”) of more than 10 million shares. See SLP 2010 Filing, *supra* n. 26. Effective September 1, 2012, the Exchange amended the monthly volume requirement to require instead that SLPs meet an ADV that is a specified percentage of the NYSE CADV and amended the Exchange’s Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. See Securities Exchange Act Release No. 67759 (August 30, 2012), 77 FR 54939 (September 6, 2012) (SR-NYSE-2012-38) (Notice of Filing).

²⁸ The SLP Pilot was originally available only for a proprietary trading unit of a member organization. In 2012, the Exchange amended Rule 107B to add a class of SLPs that are registered as market makers on the Exchange and subject to the market-wide equity market maker quoting obligations. See Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR-NYSE-2012-10) (Approval Order).

²⁹ In the SLP 2010 Filing, the Exchange modified the non-regulatory penalties to align them to the changes in the quoting and volume requirements for SLPs. See SLP 2010 Filing, *supra* n. 26. The Exchange proposes a non-substantive amendment to Rule 107B(b) to correct the cross-reference in the Rule from subparagraph (j) to subparagraph (k).

(6) the business unit of the member organization acting as an SLP-Prop must have in place adequate information barriers between the SLP-Prop unit and the member organization’s customer, research, and investment banking business.

A member organization may register as an SLMM in one or more securities traded on the Exchange in order to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. To qualify as an SLMM, a member organization must meet the all of the requirements for an SLP-Prop set forth above, except item (2) relating to mnemonics. If approved as an SLMM, the member organization must (i) maintain continuous, two-sided trading interest in assigned securities (“Two-Sided Obligation”); and meet certain pricing obligations as set forth in the rule; (ii) maintain minimum net capital in accordance with SEC Rule 15c3-1; and (iii) maintain unique mnemonics specifically dedicated to SLMM activity, which may not be used for trading in securities other than SLP securities assigned to the SLMM.

Rule 107B(e) sets forth the application process for SLPs. If an applicant is disapproved or disqualified, such applicant may request an appeal of such disapproval or disqualification by the SLP Panel as provided in the rule and/or reapply for SLP status three months after the month in which the applicant received the disapproval or disqualification notice. Rule 107B(f) describes how an SLP may voluntarily withdraw from such status.

Rule 107B(g) and (h) set forth the calculations for determining whether an SLP is meeting its 10% quoting requirement and monthly volume requirement. An SLP may post non-displayed liquidity; however, such liquidity is not counted as credit toward the 10% quoting requirement. In addition, tick sensitive orders (i.e., “Sell Plus”, “Buy Minus” and “Buy Minus Zero Plus”) do not count as credit toward the 10% quoting requirement.

Rule 107B(i) governs the assignment of securities to SLPs. Rule 107B(j) provides that SLPs may only enter orders electronically from off the Floor of the Exchange and may only enter such orders directly into Exchange systems and facilities designated for this purpose. SLMM quotes and orders may be for the account of the SLMM in either a proprietary or principal capacity on behalf of affiliated or unaffiliated persons and SLP-Prop orders must only be for the proprietary account of the SLP-Prop member organization. Rule 107B(k) sets forth non-regulatory penalties that apply if an SLP fails to

meet its quoting requirements and sets forth procedures for reapplication. Rule 107B(l) sets forth provisions for appealing non-regulatory penalties.

Rationale for Making Pilots Permanent

The Exchange adopted the NMM Pilot in part to adapt the Exchange’s model to the equities market environment in place in 2008. At that time, the more electronic market had fundamentally altered the Exchange’s traditional trading environment, in which price discovery had taken place largely, and almost exclusively, on the Floor of the Exchange. As the trading information that was previously only available on the Floor of the Exchange shifted to become widely available via electronic means, together with increased fragmentation in the market, the Exchange believed that the NMM Pilot would provide a more robust trading model on the Floor where market participants could compete on more equal footing relative to their responsibilities to the market.³⁰ With the NMM Pilot, the Exchange would continue to provide a quality market that maintains both a competitive market maker responsible for providing liquidity to the market and the element of human judgment that is particularly valuable in less liquid securities, re-openings, and closings. The Exchange sought, and believes it has attained, the appropriate balance among market participants that retains a role for liquidity providers responsible for maintaining fair and orderly markets, i.e., DMMs, together with agents on the Floor and off-Floor participants. The Exchange adopted the SLP Pilot to encourage an additional pool of liquidity at the Exchange.

As noted in the NMM Pilot approval order, the Commission had concerns regarding certain aspects of the Exchange’s proposal and approved it on a pilot basis. The Commission further stated that before it would decide to make the NMM Pilot permanent, the Exchange must provide data and analysis on the impact of the NMM Pilot. The metrics requested by the Commission include: (i) DMM time at the NBBO by security; (ii) the effective spread by security; (iii) the DMM volume broken out by DMM interest type (e.g., CCS, s-Quote); (iv) the average depth at the NBBO by market participant (DMMs, Floor brokers, and orders represented in the Exchange’s book); (v) the ratio of (i) shares not executed in Exchange systems due to

³⁰ See Securities Exchange Act Release No. 58184 (July 17, 2009 [sic]), 73 FR 42853 (July 23, 2008) (NMM Pilot Filing).

DMM execution due to (ii) the shares executed by the DMM; and (vi) effective spread for (a) orders that involve DMM liquidity provisions and (b) orders that are executed without DMM liquidity (for similar order size categories).³¹ In compliance with this requirement, the Exchange has been providing the above-described metrics to the Commission's Division of Trading and Markets and Office of Economic and Risk Analysis on a monthly basis.

Since adopting the NMM Pilot, the Exchange believes that the equities market has continued to undergo significant changes that require a fresh look at the basis for whether the NMM Pilot should be approved on a

permanent basis. Rather than looking at the specific metrics identified above, the Exchange believes that looking more holistically at the Exchange's performance relative to the equities market in general demonstrates the continued value of the NMM and SLP Pilots and basis for permanent approval of the pilots. In particular, the continued impact of Regulation NMS, which had been in effect for only one year when the Exchange filed for the NMM Pilot, together with additional technological advancements and competitive forces since 2008 have fundamentally altered the way the market functions and how market participants interact. Some of the major

developments include the significant rise in off-exchange trading from 22% in 2009 to 34% in 2014; the proliferation of over 50 trading venues, including four additional registered equities exchanges since October 2008; and the increasing segmentation of client order flow onto private dark markets.³²

The Exchange believes that the shifts in market share of traded volume among venues demonstrate the robust competition among markets. In particular, the following chart shows a snapshot of how market share of traded volume on registered exchanges has declined since 2009 and shifted to the TRF, which reports transactions that occur off of registered exchanges.³³

TABLE 1—TAPE A MARKET SHARE DEVELOPMENTS

F	NYSE (%)	NYSE Arca (%)	FINRA TRI* (%)	Nasdaq (%)	Nasdaq BX (%)	Nasdaq PSX (%)	BATS Z (%)	BATS Y (%)	EDGA* (%)	EDGX** (%)	ISE (%)	NSX (%)	CHX (%)	CBSX (%)
2009	25.0	13.4	22.5	15.5	1.9	0.0	8.5	0.0	0.0	10.4	1.9	0.6	0.3	0.1
2010	24.4	11.9	27.3	13.6	3.6	0.1	7.5	0.2	2.0	7.6	0.8	0.5	0.3	0.1
2011	24.3	10.5	29.8	13.3	2.3	0.7	6.9	2.3	3.6	5.5	0.0	0.5	0.2	0.1
2012	21.4	10.0	32.3	12.8	2.6	0.7	7.5	3.1	2.4	6.3	0.0	0.3	0.3	0.4
2013	22.1	8.4	35.3	11.6	2.3	0.5	7.1	1.9	2.8	6.9	0.0	0.4	0.4	0.4
2014	22.4	8.3	34.7	13.1	2.4	0.4	6.8	3.0	2.5	5.9	0.0	0.1	0.4	0.1

* Includes ADF and adjusted for EDGA/EDGX launch.

** EDGA and EDGX are combined into EDGX for Jan. 2009 through July 2010, as Direct Edge didn't break them out prior to receiving exchange status.

While these statistics demonstrate that all exchanges, including the Exchange, have faced challenges in the last six years, the Exchange believes that the NMM and SLP Pilots have enabled the Exchange to remain competitive during this period. As demonstrated in the chart above, notwithstanding the competing market forces, the Exchange's market share has remained relatively stable.

The Exchange further notes that it adopted the NMM and SLP Pilots during a period of high trading volumes. Since the global financial crisis of 2008–2009, there has been a significant drop in volume and volatility in cash equities markets. A case in point, Tape A CADV fell 41% from 5.64 billion in 2009 to 3.33 billion shares in 2014. Additionally, the VIX volatility index, which is an industry-standard measure of market volatility, fell from a daily average of 31.5% in 2009 to 14.2 in 2014.

³¹ See NMM Pilot Approval Order, *supra* n. 5 at 64387.

³² In a speech on October 2, 2013, Chair Mary Jo White noted that “[a] steadily increasing percentage of trading occurs in ‘dark’ venues, which now appear to execute more than half of the orders of long-term investors,” Mary Jo White, Chair, Securities and Exchange Commission, Speech at Securities Traders Association 80th Annual Market Structure Conference (Oct. 2, 2013) (available at

TABLE 2—TAPE A VOLUME AND VIX®

	CADV	VIX®
2009	5.68	31.5
2010	4.87	22.6
2011	4.37	24.3
2012	3.66	17.8
2013	3.40	14.2
2014	3.39	14.2

As overall trading volume and volatility falls, the demand for the liquidity continuously provided by market makers' [sic] falls, which leads to thinner profit margins for market makers. This impact can be demonstrated, in part, by the significant changes in the firms operating as DMMs since the Exchange adopted the NMM Pilot. In October 2008, the Exchange had six firms operating as specialists: Bank of America Corp. (“BAC”), Barclays Capital, Inc. (“Barclays”), Bear Wagner Specialists, LLC (“Bear Wagner”), Goldman, Sachs and Co (“Goldman Sachs,” operating Spear, Leads & Kellogg, LLC), Kellogg

http://www.sec.gov/News/Speech/Detail/Speech/1370539857459#.VNoXc_nF_AQ. The Commission also noted the fragmentation of the equities markets in its 2010 Concept Release on Equity Market Structure. See Securities Exchange Act Release No. 61358, 75 FR 3594 (Jan. 21, 2010). See also, Staff of the Division of Trading and Markets, Commission, Equity Market Structure Literature Review, Part I: Market Fragmentation, Oct. 7, 2013, (available at: <http://www.sec.gov/marketstructure/>

Specialist Group (“Kellogg”), and LaBranche & Company (“LaBranche”). Six years later, only one of those firms still operates as a DMM, Barclays. Below are key changes within the NYSE DMM universe:

- In March 2009, Barclays acquired Bear Wagner's DMM business, with Bear Wagner exiting the business.
- In January 2010, Barclays acquired LaBranche's DMM business, with LaBranche exiting the business.
- In February 2010, Getco Securities, LLC (“Getco”) became a NYSE DMM.
- In December 2010, Knight Capital Group, Inc. (“Knight”) acquired Kellogg's NYSE and NYSE MKT DMM business, with Kellogg exiting the business.
- In November 2011, Getco acquired BAC's DMM business, with BAC exiting the business.
- In December 2011, J. Streicher & Co, an NYSE MKT DMM, became a NYSE DMM.
- In April 2012, Virtu Financial (“Virtu”) became a NYSE DMM (in

[research/fragmentation-lit-review-100713.pdf](http://www.sec.gov/research/fragmentation-lit-review-100713.pdf)) and Tuttle, Laura, Alternative Trading Systems: Description of ATS Trading in National Market System Stocks (available at <http://www.sec.gov/marketstructure/research/alternative-trading-systems-march-2014.pdf>).

³³ The market share percentages set forth in Table 1 are based on trades reported to the Consolidated Tape Association and via Crossing Session II on the Exchange pursuant to Rule 902(a)(iii).

2011, Virtu entered the DMM business by acquiring Cohen Capital Group, an NYSE MKT DMM).

- In November 2012, Brendan Cryan & Co, an NYSE MKT DMM, became an NYSE DMM.
- In July 2013, Knight and Getco merged to become KCG Americas.
- In August 2014, IMC Financial Markets acquired Goldman’s DMM business, with Goldman exiting the business.

In this challenging environment, the Exchange believes that the operation of the NMM Pilot has helped the Exchange better serve the needs of investors by maintaining high market-quality standards. Specifically, the NMM Pilot allowed the Exchange’s former specialists to compete in today’s fully electronic trading environment, continuing to provide contribute to market quality. Moreover, while there has been turnover in who comprises the DMM community, the Exchange believes that the operation of the NMM Pilot has been instrumental in attracting new entrants to the business as the former specialists have exited.³⁴

With respect to how DMMs operate, the Exchange believes that the NMM Pilot strikes the appropriate balance between DMM benefits and obligations. Importantly, while DMMs do not need to yield to orders on the Book, under the NMM Pilot, DMMs continue to be subject to Exchange-specific affirmative obligations to maintain a fair and orderly market that are not imposed on any other cash equity market participant. These obligations include maintaining a quote at the inside a specified percentage of the day,³⁵ supplying liquidity as needed to facilitate openings and closings,³⁶ maintaining price continuity with reasonable depth in all of their registered securities,³⁷ and re-entering the market if taking liquidity to increase a trading position.³⁸ Similarly, the SLP Pilot has created a separate class of liquidity providers at the Exchange, with differing incentives, to supplement the liquidity provided by the DMMs, which further supports the Exchange’s market quality.

The Exchange believes that by operating under its NMM and SLP Pilots, it offers a diverse and unique

population of market participants, including DMMs, SLPs, Floor brokers, and other off-Floor market participants, that allow it to more effectively compete for order flow, with superior market quality. The Exchange believes that an important market quality measure is how much liquidity an exchange provides. In today’s fragmented equity model, the market quality of displayed venues varies widely. The Exchange believes, however, that it continues to be a leader in liquidity providing among registered exchanges, which is due to the ongoing operation of the NMM and SLP Pilots.

The chart below highlights six key market-quality metrics that measure best price and liquidity in Exchange-listed securities. Best prices are measured by assessing Exchange bid/ask spreads, percentage of time at best prices, and percentage time alone at the best prices. Liquidity is measured by looking at market share, most displayed shares at the best prices, and percentage of time at the best prices with the greatest displayed size. As set forth in the table below, the Exchange ranks first in each of these metrics.

NYSE-LISTED SECURITIES (TAPE A)—DECEMBER 2014

All securities (equal weighted)

	Market share (volume weighted)	Average quoted spread (time weighted)	Displayed shares at NBBO	% Time at NBBO	% Time best price & largest size	% Time alone at NBBO
NYSE	23.4	48.5	1071.9	74.0	45.8	19.6
Nasdaq	13.6	311.6	451.6	47.3	17.5	4.2
NYSE Arca	8.0	710.4	409.6	42.9	12.0	3.0
BZX	7.7	463.8	294.3	31.2	6.7	1.5
EDGX	5.0	382.1	326.6	29.5	9.4	3.1
BYX	3.6	551.1	107.7	21.2	2.5	0.6
Nasdaq BX	1.8	68.7	59.2	15.7	2.0	0.2
EDGA	2.8	850.6	94.9	19.2	2.0	0.3

The Exchange notes that DMMs and SLPs have been important contributors to the Exchange’s performance, particularly at setting the NBBO. For example, during September 2014, DMMs and SLPs (including SLMMs) accounted for over 38% of the liquidity-providing volume on the Exchange. In addition, during 2014, DMMs have averaged quoting at the inside almost 30% of the time and DMMs provided an average of 14.6% of the Exchange’s size.

In 2014, 8.3% of DMM volume executed was from quotes that improved the NBBO at the time the quote was entered. This represents an improvement since 2009, when only 2.7% of DMM volume improved the NBBO.

The Exchange believes that key changes to the NMM Pilot support the continued operation of the pilot in the ever-changing equities environment. For example, as noted above, in 2009, the Exchange amended Rule 104(a)(1) to

increase the amount of time that a DMM unit must maintain a bid and offer at the inside from 10% to 15% for Less Active Securities and from 5% to 10% for More Active Securities.³⁹ During the same period, the Exchange also amended Rule 1000 to permit CCS to provide a partial fill to an incoming order.⁴⁰

After the DMM’s quoting requirement was increased, DMM share of intraday provide activity increased, from 18.82% in July 2009, before the quoting change,

³⁴ The Exchange notes that in 2008, it also amended its rules governing the operation of DMMs, in particular, Rule 98, to enable specialists, and now DMMs, to better integrate their NYSE market-making operations with market-making activities on other markets. See Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 73 FR 48260 (Aug. 18, 2008) (SR-NYSE-2008-45) (Approval

Order); see also Securities Exchange Act Release No. 72534 (July 3, 2014), 79 FR 39019 (July 9, 2014) (SR-NYSE-2014-12) (Order approving amendments to Rule 98 to adopt a principles-based approach to prohibit the misuse of material non-public information).

³⁵ See NYSE Rule 104(a)(1)(A).

³⁶ See NYSE Rule 104(a)(2)–(3).

³⁷ See NYSE Rule 104(f)(ii).

³⁸ See NYSE Rule 104(h).

³⁹ See DMM quoting requirement filing, *supra* n. 14.

⁴⁰ See CCS Partial Fill Approval Order, *supra* n. 18.

to 20.03% in September 2009. The Exchange noted a concurrent decline in DMM CCS volume during this same time from 9.32% to 6.94% of DMM activity. The Exchange believes that the decrease in CCS activity was related to a corresponding increase in the DMM displayed quoting activity. During the same period, the Exchange experienced a drop in NYSE shares routed to away markets from 7.8% in July 2009 to 7.1% in September 2009, to 6.6 in October 2009. The Exchange believes that the decline in shares routed away is attributable in part to both to the increased quoting requirement, because DMMs represented the best quote in the market more frequently, and the ability for CCS to partially fill incoming orders, thereby obviating the need to route such orders to away markets. Accordingly, the Exchange believes that these changes to the NMM Pilot contributed

to the ongoing market quality at the Exchange.

SLPs likewise represent a substantial share of the Exchange's intraday liquidity-providing volume. Participation in the SLP Pilot has grown steadily since inception. When first launched, only 497 symbols were covered by an SLP. By the end of September 2014, nearly every Exchange symbol, including operating companies, preferred stocks, warrants, rights and all other issue types, had at least one SLP quoting in it. In December 2014, approximately 45% of these symbols had at least one SLP quoting at the inside at least 10% of the time.

Through December 2014, SLPs represented 25.2% of liquidity-providing execution. The Exchange notes that SLPs have been a solid contributor to liquidity in less-active issues, and now account for 13.3% of

the liquidity-providing volume in issues outside of the Exchange's 1,000 most active issues.

The following chart shows both the increase in number of symbols assigned to SLPs during the course of the pilot, and the number of SLP symbols in which at least one SLP is at the NBB or NBO at least 10% of the time. The first two columns represent a count of all SLP/symbol pairs where the average time at the NBB or NBO (referred to in the chart as NBBO) was 10%. For example, if symbol XYZ were assigned to three SLPs, of which two met the 10% NBBO quoting requirement, the count for "Total" column would be three, and the count for the "NBBO >10%" column would be two. The right two columns show the number of distinct symbols that are covered by and reached 10% NBBO by at least one SLP.

SLP SYMBOLS AND QUOTING

	Total	NBBO>10%	Distinct symbols	Distinct NBBO >10%
Dec-08	501	332	497	335
Dec-09	4,328	2,864	1,242	1,199
Dec-10	6,509	4,079	1,404	1,302
Dec-11	6,599	3,293	1,478	1,019
Dec-12	7,971	3,340	1,909	1,377
Dec-13	10,352	2,845	3,218	1,125
Dec-14	8,572	3,458	3,262	1,481

The Exchange notes that notwithstanding the significant changes the U.S. equities market has undergone since 2008, the statistics the Exchange committed to track in connection with the NMM Pilot demonstrate that the pilot rules have been effective at improving the Exchange's effective spread on marketable orders, the percentage of time that the DMMs quote at the NBBO and the percentage of DMM participation in total trading volume. Specifically,

- Effective spreads on all marketable orders, which ranged from 10 to 18.5 basis points from August to December 2008, have remained below 10 basis points since September 2009 and ranged from 6.7 to 8.2 basis points from November 2013 to November 2014. Effective spreads have declined for all order size categories from 100-9999 shares.

- The percentage of time that DMMs were quoting at the NBBO, which ranged from 9.9% to 19% from August to December 2008, have exceeded 20% since that time and ranged from 31.3% to 39.2% in the period from November 2013 to November 2014.

For these reasons, the Exchange believes that the Pilots' rules, as amended, should be made permanent. The Exchange also proposes to delete Rule 104T, which is the pre-NMM Pilot version of Rule 104. Rule 104T remains in the Exchange's rule book, but is not operational. With permanent approval of current Rule 104, the need to retain Rule 104T is mooted. The Exchange also proposes to delete Supplementary Material to Rule 104, and related reference to that Supplementary Material in Rule 104(a)(2), because that rule text was intended to be in effect only through October 30, 2009.⁴¹ Finally, the Exchange proposes to replace the reference to "NYSE Regulation's Division of Market Surveillance" in Rule 104(k) with a reference to the Exchange. Pursuant to Rule 0, references to the Exchange may mean references to NYSE Regulation or FINRA, which performs certain regulatory services to the Exchange pursuant to a Regulatory Services Agreement.

⁴¹ See Securities Exchange Act Release No. 60573 (Aug. 26, 2009), 74 FR 45500 (Sept. 2, 2009) (SR-NYSE-2009-86) (Notice of Filing).

The Exchange notes that the proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴² in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair

⁴² 15 U.S.C. 78f(b).

⁴³ 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is consistent with these principles because it seeks to make permanent Pilots and associated rule changes that were previously approved by the Commission as pilots, that the Exchange has subsequently provided data and analysis to the Commission, and that this data and analysis, as well as the further analysis in this filing, clearly shows that the Pilots have operated as intended and are consistent with the Act.

The Exchange also believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because making the Pilots permanent would provide market participants with a trading venue that encourages the addition of liquidity, facilitates the trading of larger orders more efficiently, and operates to reward aggressive liquidity providers. The monthly statistics provided by the Exchange to the Commission staff over more than five years demonstrate that the NMM Pilot has improved market quality by numerous measures. Similarly, the Exchange believes the data show that the SLP program has appropriately rewarded aggressive liquidity providers in the market. The Exchange believes that making both of these Pilots permanent would encourage the additional utilization of, and interaction with, the NYSE and provide customers with the premier venue for price discovery, liquidity, competitive quotes, and price improvement.

In addition, the Exchange believes that making the NMM and SLP Pilots permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because the rules strike the appropriate balance between the obligations and benefits of the Exchange's market participants. For example, while DMMs no longer have agency responsibilities to the Book, they retain a number of affirmative obligations that are unique to the Exchange, including meeting Exchange-only quoting requirements, supplying liquidity as needed when facilitating openings and closings, and maintaining depth and continuity in their listed securities. Given these obligations, the Exchange believes it is appropriate to classify DMMs as a separate participant in the parity allocation wheel. The Exchange notes that it has been operating under this model since 2009, and the above-cited

market statistics demonstrate that within the highly competitive cash equities market, the Exchange's model, including DMM parity, has enabled the Exchange to maintain execution quality for all investors on the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,⁴⁴ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that making the Pilots permanent would continue to foster competition among liquidity providers and maintain execution quality on the Exchange. The Exchange believes that the data supplied to the Commission and experience gained over more than six years have demonstrated the efficacy of the Pilots, and as such, they should be made permanent. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 such longer period up to 90 days (i) as the Commission may designate 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 disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2015-26 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSE-2015-26. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2015-26, and should be submitted on or before July 8, 2015.

⁴⁴ 15 U.S.C. 78f(b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015-14827 Filed 6-16-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75160; File No. SR-FINRA-2015-016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exemptions From the Order Audit Trail System Recording and Reporting Requirements

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 10, 2015, 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, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 Rule 7470 to extend for four years FINRA’s ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (“OATS”) Rules (“OATS Rules”) for manual orders received by the member.

Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

* * * * *

7400. ORDER AUDIT TRAIL SYSTEM

* * * * *

7470. Exemption to the Order Recording and Data Transmission Requirements

(a) through (b) No Change.

(c) This Rule shall be in effect until July 10, 2019[2015].

* * * * *

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, the Proposed Rule Change

1. Purpose

The OATS Rules impose obligations on FINRA members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members relating to OTC equity securities and NMS stocks. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is then used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws and regulations.

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, gave FINRA the authority to grant exemptive relief from the OATS reporting requirements for manual orders.⁴ In 2006, FINRA’s exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording

requirements.⁵ Under Rule 7470, at a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than \$2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.⁶ An exemption granted by FINRA pursuant to Rule 7470 is for a maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.⁷

Rule 7470 also includes a sunset provision. As initially adopted, the exemptive provision expired as of July 10, 2011, which was five years from the original effective date of the rule.⁸ In 2011, FINRA filed a proposed rule change to extend the sunset provision until July 10, 2015, noting that FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship.⁹ FINRA noted that these concerns continued to be present for many firms and concluded it was appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and

⁵ See Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. See FINRA Regulatory Notice 08-57 (October 2008).

⁶ See Rule 7470(a).

⁷ See Rule 7470(b).

⁸ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

⁹ See Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011).

⁴⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ See Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).