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April 18, 2016

VIA E-MAIL

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

Re: Securities Exchange Act Rel. 34-77332 (SR-NYSE-2016-16)

Dear Mr. Fields:

NYSE LLC; filed the attached Amendment No. 1 to the above-referenced filing on April 15, 2016.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials "BJF" followed by a stylized flourish.

Encl. (Amendment No. 1 to SR-NYSE-2016-16)

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 34 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2016 - * 16
 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *) 1

Filing by New York Stock Exchange
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend Rule 98 to provide that when DMMs enter interest for the purpose of facilitating the execution of customer orders, such orders would not be required to be designated as DMM interest

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Clare Last Name * Saperstein
 Title * Associate General Counsel NYSE Group Inc
 E-mail * [REDACTED]
 Telephone * [REDACTED] Fax [REDACTED]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)
 Assistant Secretary

Date 04/15/2016
 By Martha Redding
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Martha Redding, [REDACTED]

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend Rule 98 to provide that when Designated Market Makers (“DMM”) enter interest for the purpose of facilitating the execution of customer orders, such orders would not be required to be designated as DMM interest. This Amendment No. 1 supersedes the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange believes that the proposed amendments will not have any direct effect, or any significant indirect effect, on any other NYSE rule in effect at the time of the filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors of the Exchange is required. Therefore, the Exchange's internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Clare F. Saperstein
Associate General Counsel
NYSE Group, Inc.
(212) 656-2355

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

- (a) Purpose

The Exchange proposes to amend Rule 98 to provide that when DMMs enter interest on a proprietary basis for the purpose of facilitating the execution of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

customer orders, such orders would not be required to be designated as DMM interest.³

Background

In 2014, the Exchange amended Rule 98 to adopt a principles-based approach to prohibit the misuse of material nonpublic information by a member organization that operates a DMM unit and make conforming changes to other Exchange rules.⁴ Those rule changes provide member organizations operating DMM units with the ability to integrate DMM unit trading with other trading units, while maintaining tailored restrictions to address that DMMs while on the Trading Floor may have access to certain Floor-based non-public information. By removing prescriptive restrictions, the 2014 Filing was designed to enable a member organization that engages in market-making operations on multiple exchanges to house its DMM operations together with the other market-making operations, even if such operations are customer-facing, or, to enable a member organization to consolidate all equity trading, including customer-facing operations and the DMM unit, within a single independent trading unit.

Rule 98(c) sets forth specified restrictions to operating a DMM unit.⁵ Among other requirements, Rule 98(c)(4) provides that any interest entered into Exchange systems by the DMM unit in DMM securities⁶ must be identifiable as DMM unit interest. Current Rule 98(c)(4) was designed to ensure that all trading activity by a DMM unit in DMM securities at the Exchange is available for review. As discussed below, under Rule 98(c)(5), DMMs would continue to be required to submit information to the Exchange to make available to the Exchange for review all trading activity by a DMM unit in DMM securities. The Exchange did not specify which system(s) a DMM unit must use because, as the Exchange's trading systems continue to evolve, the manner by which interest would be identified as DMM interest could change. Accordingly, the current rule requires any trading for the account of the DMM unit in DMM securities at the Exchange to be identifiable as DMM interest.

³ As defined in Rule 2(i), the term "DMM" means an individual member, officer, partner, employee or associated person of a Designated Market Maker Unit who is approved by the Exchange to act in the capacity of a DMM.

⁴ See Securities Exchange Act Release Nos. 72534 (July 3, 2014), 79 FR 39019 (July 9, 2014) (Approval Order) and 71837 (April 1, 2014), 79 FR 19146 (April 7, 2014) ("2014 Notice") (SR-NYSE-2014-12) ("2014 Filing").

⁵ As defined in Rule 98(b)(1), the term "DMM unit" means a trading unit within a member organization that is approved pursuant to Rule 103 to act as a DMM unit.

⁶ As defined in Rule 98(b)(2), the term "DMM securities" means any securities allocated to the DMM unit pursuant to Rule 103B or other applicable rules.

Rule 98(c)(5) provides that a member organization must provide the Exchange with real-time net position information for trading in DMM securities by the DMM unit and any independent trading unit of which it is a part, at such times and in the manner prescribed by the Exchange. Rule 98(d) further specifies that the DMM rules⁷ will apply only to a DMM unit's quoting or trading in its DMM securities for its own accounts at the Exchange. Accordingly, the DMM rules do not apply to any customer orders that a member organization that operates a DMM unit sends to the Exchange as agent.⁸

Because Rule 98(c)(4) currently requires that any interest entered into Exchange systems by the DMM unit in DMM securities be identifiable as DMM interest, a DMM unit integrated with a customer-facing unit that would send customer orders in DMM securities to the Exchange as proprietary interest must identify it as DMM interest. As a result, although agency orders are not subject to DMM rules, customer-driven interest entered on a proprietary basis is subject to all DMM rules.

To date, none of the member organizations operating a DMM have integrated a DMM unit with a customer-facing trading unit and the Exchange believes that the current rule requiring customer-driven orders that are represented on a proprietary basis be designated as DMM interest has served as a barrier to achieving such integration.⁹ Specifically, there are certain scenarios when the rules governing DMMs may conflict with a member organization's obligations to its customers. For example, DMMs are not permitted to enter Market Orders, MOO Orders, CO Orders, MOC Order, LOC Orders, or orders with Sell "Plus" – Buy "Minus" Instructions.¹⁰ But to meet customer instructions, a customer-driven order entered by a member organization on a proprietary basis may need to be one of these order types. As another example, DMMs are restricted from engaging in

⁷ As defined in Rule 98(b)(3), the term "DMM rules" means any rules that govern DMM or DMM unit conduct or trading.

⁸ See 2014 Notice, supra note 4 at 19152 (specifying that Rule 98(d) was added because DMM rules are not applicable to any customer orders routed to the Exchange by a member organization as agent).

⁹ The Exchange understands it is a common practice among market makers that operate as wholesalers, and thus have their own customer orders as well as retail order flow from another broker dealer, to facilitate the execution of customer order flow by representing it on a proprietary basis when such orders are routed to an exchange. Once a customer-driven order that has been represented on a proprietary basis on an exchange has been executed, the market maker uses the position acquired on the Exchange to fill the customer order either on a riskless-principal basis or with price improvement to the customer.

¹⁰ See Rule 104(b)(vi).

specified trading in the last ten minutes of trading before the close of trading.¹¹ But a member organization may have a best execution obligation to route a customer-driven order to the Exchange in the last ten minutes of trading.

Proposed Amendments

The Exchange proposes to amend Rule 98 to better reflect how member organizations that integrate DMM unit operations with customer-facing operations may facilitate customer-driven order flow to the Exchange in DMM securities. As noted above, one of the intended goals of the 2014 Filing was to permit member organizations to integrate DMM unit operations with other market-making operations, including customer-facing units. However, as discussed above, subjecting customer order flow that is entered on a proprietary basis to DMM rules may be inconsistent with a member organization's obligations to its customers, and thus continue to serve as a barrier to integrating DMM units within a member organization. Accordingly, the Exchange proposes to amend Rule 98 to facilitate better integration of DMM units with a member organization's existing customer-facing market-making trading units by specifying that, as with agency orders, customer-driven orders that are entered on a proprietary basis by the DMM unit would not be required to be designated as DMM interest.

The Exchange proposes to amend Rule 98 to provide that proprietary interest that is entered by a DMM unit for the purposes of facilitating customer orders would not be required to be designated as DMM interest. The Exchange proposes to replace the phrase "any interest" with the phrase "proprietary interest" in Rule 98(c)(4) to clarify that the existing rule only governs proprietary interest of a DMM unit, i.e., interest for the account of the member organization. As further proposed, the Exchange would amend Rule 98(c)(4) to provide that proprietary interest entered into Exchange systems by the DMM unit in DMM securities would not be required to be identifiable as DMM unit interest if such interest is (1) on a riskless principal basis, or on a principal basis to provide price improvement to the customer, and (2) for the purposes of facilitating the execution of an order received from a customer (whether its own customer or the customer of another broker-dealer). The Exchange proposes to define such interest as a "customer-driven order."

The proposed definition of "customer-driven order" is not a novel concept in that other SROs rules define the concept of a proprietary order being entered to facilitate a customer order. For example, Supplementary Material .03 to FINRA

¹¹ See Rule 104(g)(i)(A)(III) (defining Prohibited Transactions). Specifically, a DMM with a long position in a security is prohibited from making a purchase in a security that results in a new high price on the Exchange for the day, and a DMM with a short position in a security is prohibited from making a sale in such security that results in a new low price for the day.

Rule 5320 defines the term “facilitated order” to mean a proprietary trade that is for the purposes of facilitating the execution, on a riskless principal basis, of an order from a customer (whether its own customer or another broker-dealer).¹² The Exchange proposes a distinction for the definition of “customer-driven order” in Rule 98 as compared to the Rule 5320 definition of “facilitated order” because, as proposed, a customer-driven order could be entered, not only on a riskless principal basis, but also on a principal basis so the member organization could provide price improvement to the customer. In either case, the member organization entering the customer-driven order would need to have received a customer order before entering a customer-driven order at the Exchange.¹³

The proposed rule change is designed to reflect how member organizations handle customer orders, which in many circumstances, are routed to an exchange on a proprietary basis to facilitate execution of a customer’s order. Therefore, the Exchange believes that the proposed amendment is consistent with the current rule, which does not require agency orders entered by the member organization that operates a DMM unit to be subject to DMM rules.¹⁴

The Exchange further proposes to amend Rule 98(c)(4) to specify that a DMM unit must use unique mnemonics that identify to the Exchange its customer-driven orders in DMM securities. Such mnemonics may not be used for trading activity at the Exchange in DMM securities that are not customer-driven orders, but may be used for trading activities in securities not assigned to the DMM. The Exchange believes that requiring a separate mnemonic for customer-driven orders would assist the Exchange in monitoring DMM unit compliance with the proposed rule.¹⁵

The Exchange further proposes to amend Rule 98(d) to specify which rules would be applicable to trading by the DMM unit. As proposed, the rules, fees, or credits applicable to DMM quoting or trading activity would apply only to a DMM unit’s

¹² See also Supplementary Material .03 to NYSE Rule 5320.

¹³ If a customer-driven order, as defined in Rule 98(c)(4), is not handled on a riskless principal basis, it would not be eligible for the riskless principal exception to the prohibition against trading ahead of customer orders as specified in Rule 5320.

¹⁴ See supra note 8.

¹⁵ The Exchange requires a member to use a different mnemonic for its SLP-Prop trading activity in assigned SLP securities than it uses for such member’s trading in assigned SLP securities that is not SLP-Prop trading. Using different mnemonics allows the Exchange to identify SLP-Prop trading activity in a member organization’s assigned SLP securities. A member organization may use the same mnemonic for its trading activity in securities not assigned to an SLP as it uses for its SLP-Prop trading in assigned SLP securities. See Rule 107B(c)(2).

quoting or trading in its DMM securities for its own account at the Exchange that has been identified as DMM interest. In addition, consistent with the proposal that customer-driven orders would not be required to be designated as DMM interest, the Exchange proposes to add text to Rule 98(d) to state that customer-driven orders for the account of a DMM unit that have not been identified as DMM interest would not be subject to DMM rules or be eligible for any fees or credits applicable to DMM quoting or trading activity.¹⁶ In addition, such customer-driven orders could not be aggregated with interest that has been identified as DMM interest for purposes of any DMM-related fees or credits or DMM quoting obligations specified in Rule 104(a). This proposed rule text would provide that customer-driven orders not designated as DMM interest would not be subject to DMM rules, which, as described above, include restrictions on availability of certain order types and entry of specified orders during the last ten minutes of trading. Because a customer-driven order that has not been designated as DMM interest would not be subject to DMM rules, it would also not be eligible for a parity allocation applicable for DMMs pursuant to Rule 72(c) or be used to assist a DMM in meeting its quoting or market maintenance obligations, or be eligible for DMM fees or credits.

The Rule 98(c)(5) obligation to provide the Exchange with real-time net position information in DMM securities would continue to be applicable to the DMM unit's position in DMM securities together with any position of a Regulation SHO independent trading unit of which the DMM unit may be included, regardless of whether they are positions resulting from trades in away markets, trades as a result of DMM interest entered at the Exchange, or customer-driven orders routed to the Exchange that were not identified as DMM interest.¹⁷ For example, if a

¹⁶ Customer-driven orders would be eligible for any fees or credits applicable to equity transactions at the Exchange that are not DMM or Floor broker trades. See NYSE Price List, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

¹⁷ Under Regulation SHO, determination of a seller's net position is based on the seller's position in the security in all of its accounts, absent aggregation unit treatment under Rule 200(f) of Regulation SHO. See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48010, n.22 (Aug. 6, 2004); see also Securities Exchange Act Release No. 48709 (Oct. 29, 2003), 68 FR 62972, 62991 and 62994 (Nov. 6, 2003); Letter from Richard R. Lindsey, Director, Division of Market Regulation, to Roger D. Blanc, Wilkie Farr & Gallagher, SEC No-Action Letter, 1998 SEC No-Act. LEXIS 1038, p. 5 (Nov. 23, 1998); Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24419 n.47 (June 9, 1992); Securities Exchange Act Release No. 27938 (Apr. 23, 1990), 55 FR 17949, 17950 (Apr. 30, 1990).

The Commission adopted a narrow exception to Regulation SHO's "locate" requirement only for market makers engaged in bona-fide market making in the security at the time they effect the short sale. See 17 CFR 242.203(b)(2)(iii); see

DMM unit is combined with market-making desks that are trading on away markets and that route customer-driven orders to the Exchange in DMM securities that are not identified as DMM interest, the member organization would be required to report the position of the entire DMM unit in DMM securities, not only the DMM's Exchange-traded positions resulting from DMM interest. The Exchange also proposes a non-substantive amendment to Rule 98(c)(5) to delete the term "for trading," which the Exchange believes is extraneous rule text.

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁸ that an Exchange have rules that are designed to promote the just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by providing greater specificity in Rule 98 regarding which proprietary interest would be required to be entered as DMM interest.

The Exchange believes that the proposed amendment to define the term "customer-driven order" to be proprietary interest of a DMM that is for the purposes of facilitating the execution of an order received from a customer (whether its own customer or the customer of another broker-dealer) on a riskless principal basis or on a principal basis to provide price improvement to the customer reflects the current reality of how broker-dealers facilitate customer orders that are routed to an exchange. Specifically, after receiving a customer order, such customer order is routed to an exchange on a proprietary basis, and

also Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (Aug. 6, 2004); Securities Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61698-9 (Oct. 17, 2008). Broker-dealers would not be able to rely on the Exchange's or any self-regulatory organization's designation of market marking for eligibility for the bona-fide market making exception to the "locate" requirement, as such designations are distinct and independent from Regulation SHO. Further, the Exchange's designation of proprietary interest or any exclusion from proprietary interest for purposes of NYSE rules is not relevant for purposes of Regulation SHO. Eligibility for the bona-fide market making exception depends on the facts and circumstances and a determination of bona-fide market making is based on the Commission's factors outlined in the aforementioned Regulation SHO releases. It should also be noted that a determination of bona-fide market making is relevant for the purposes of the close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

¹⁸

15 U.S.C. 78f(b)(5).

once an execution is received from an exchange, the execution is provided to the customer either on a riskless principal basis or with price improvement. Facilitating customer orders on a proprietary basis is not a novel concept and serves as the basis of the definition of the term “facilitated order” in Supplementary Material .03 to FINRA Rule 5320. While the Exchange proposes that customer-driven orders for the purposes of Rule 98 would not be required to be executed only on a riskless principal basis, but could also be executed on a principal basis to provide price improvement to the customer, this difference does not alter the premise of how member organizations facilitate customer orders, as already established in Rule 5320.03. Because the proposed definition is narrowly defined to reflect how customer orders are facilitated on a proprietary basis when routed to an exchange, the Exchange believes that the proposed amendment to Rule 98(c)(4) to define the term “customer-driven order” would remove impediments to and perfect the mechanism of a free and open market.

The Exchange believes that requiring a DMM unit to use unique mnemonics to identify customer-driven orders in DMM securities would promote just and equitable principles of trade because requiring such orders to be entered using unique mnemonics would assist the Exchange in monitoring DMM unit compliance with the proposed rule.

The Exchange further believes that providing DMM units with a choice of whether to designate a customer-driven order as DMM interest would remove impediments to and perfect the mechanism of a free and open market because certain DMM rules may conflict with a broker-dealer’s obligation to its customers. As discussed in the 2014 Filing, agency orders entered by a member organization that operates a DMM unit are not subject to DMM rules.¹⁹ Yet, if that same customer order were routed to the Exchange on a proprietary basis, which is the manner by which broker-dealers may handle customer order flow, it would be subject to DMM rules. Accordingly, because Rule 98 does not currently require agency flow to be subject to DMM rules, the Exchange believes it is consistent with the protection of investors and the public interest that agency flow that is facilitated by a member organization on a proprietary basis at the Exchange would similarly not be required to be subject to DMM rules.

The proposed rule change would further be consistent with the protection of investors and the public interest because it would enable customer-driven orders to not be subject to DMM rules and eliminate any conflict with customer instructions or best execution obligations. The Exchange notes that this proposed rule change would not alter in any way a member organization’s existing obligations under Section 15(g) of the Act,²⁰ Regulation SHO,²¹ Rule 5320, or to

¹⁹ See supra note 8.

²⁰ 15 U.S.C. 78o(g).

²¹ 17 CRF 242.201.

maintain policies and procedures to assure that a member organization does not engage in any frontrunning of customer order information in violation of Exchange, FINRA, or federal securities laws.

The Exchange further believes that the proposed amendments to Rule 98(d) would remove impediments to and perfect the mechanism of a free and open market by promoting transparency in Exchange rules regarding which rules, fees or credits applicable to DMM quoting or trading activity would be applicable to which interest. More specifically, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market to provide specificity in Exchange rules that customer-driven orders that have not been designated as DMM interest would not be subject to the DMM rules and also would not be eligible for DMM fees or credits or to be aggregated with DMM interest for purposes of any DMM-related fees or credits or DMM quoting obligations.

Finally, the Exchange believes that the proposed amendment to Rule 98(c)(5) would remove impediments to and perfect the mechanism of a free and open market by removing extraneous rule text, thus promoting simplicity in Exchange rules.

4. Self-Regulatory Organization's Statement on the 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. The proposed rule change is designed to be pro-competitive because it would remove a restriction unique to DMMs as specified in Rule 98, thus enabling existing customer-facing market making units to operate as a DMM unit at the Exchange without needing to change the manner by which they may facilitate customer orders on a proprietary basis at an exchange.

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

The Exchange neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange respectfully requests accelerated effectiveness of this proposed rule

change pursuant to Section 19(b)(2) of the Act.²² The Exchange believes that there is good cause for the Commission to accelerate effectiveness because the proposed rule change is consistent with the goal of the 2014 Filing to exclude agency orders entered by a member organization that operates a DMM unit from being subject to DMM rules. The proposed rule change is designed to reflect how member organizations represent agency orders and narrowly defines a class of proprietary interest that is entered to facilitate customer orders from being required to be subject to DMM rules. Moreover, the proposed definition of “customer-driven order” is not novel, as is it based on the existing definition of “facilitated order” set forth in Supplementary Material .03 to Rule 5320 and Supplementary Material .03 to FINRA Rule 5320, which already describe how proprietary orders can be entered to facilitate a customer order. The Exchange believes that difference between the proposed Rule 98 definition of “customer-driven order” and the Rule 5320 definition of “facilitated order” is not material because, if a “customer-driven order” under Rule 98 is not executed on a riskless principal basis, it would be executed on a principal basis to provide price improvement and would not be eligible for the riskless principal exception in Rule 5320.

The Exchange further believes that providing DMMs with the choice of whether to designate customer-driven orders as DMM interest would permit member organizations operating DMM units to facilitate customer-based order flow at the Exchange without such orders being restricted by DMM obligations, which may be contrary to customer instructions or best execution obligations. The Exchange further believes that the proposed rule change would apply DMM rules fairly because customer-driven orders not designated as DMM interest, would not be subject to the obligations, nor be eligible for the benefits, applicable to DMM interest.

Finally, the Exchange believes there is good cause to accelerate effectiveness of this proposed rule change because it would promote competition on the Exchange. As has been previously announced, additional member organizations are seeking to become approved as DMMs.²³ The proposed rule change would facilitate the transition of DMM responsibilities to new entrants that engage in customer-facing market making, thereby promoting competition among member organizations seeking to be approved as a DMM on the Exchange.

²² 15 U.S.C. 78s(b)(2).

²³ See “Citadel Securities to become #1 Designated Market Maker on NYSE,” available at <http://www.citadelsecurities.com/news/citadel-securities-become-1-designated-market-maker-nyse/>; and “GTS to become Designated Market Maker on the New York Stock Exchange,” available at <http://gtsx.com/in-the-news/details/gts-to-become-designated-market-maker-on-the-new-york-stock-exchange>.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 4 – Proposed rule text marked to show changes made in Amendment No. 1

Exhibit 5 – Text of proposed changes to Exchange rules

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSE-2016-16; Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 98 to Provide that When Designated Market Makers Enter Interest for the Purpose of Facilitating the Execution of Customer Orders, Such Orders Would Not be Required to be Designated as DMM Interest

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 15, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 98 to provide that when Designated Market Makers (“DMM”) enter interest for the purpose of facilitating the execution of customer orders, such orders would not be required to be designated as DMM interest. This Amendment No. 1 supersedes the original filing in its entirety. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 98 to provide that when DMMs enter interest on a proprietary basis for the purpose of facilitating the execution of customer orders, such orders would not be required to be designated as DMM interest.⁴

Background

In 2014, the Exchange amended Rule 98 to adopt a principles-based approach to prohibit the misuse of material nonpublic information by a member organization that operates a DMM unit and make conforming changes to other Exchange rules.⁵ Those rule changes provide member organizations operating DMM units with the ability to integrate DMM unit trading with other trading units, while maintaining tailored

⁴ As defined in Rule 2(i), the term “DMM” means an individual member, officer, partner, employee or associated person of a Designated Market Maker Unit who is approved by the Exchange to act in the capacity of a DMM.

⁵ See Securities Exchange Act Release Nos. 72534 (July 3, 2014), 79 FR 39019 (July 9, 2014) (Approval Order) and 71837 (April 1, 2014), 79 FR 19146 (April 7, 2014) (“2014 Notice”) (SR-NYSE-2014-12) (“2014 Filing”).

restrictions to address that DMMs while on the Trading Floor may have access to certain Floor-based non-public information. By removing prescriptive restrictions, the 2014 Filing was designed to enable a member organization that engages in market-making operations on multiple exchanges to house its DMM operations together with the other market-making operations, even if such operations are customer-facing, or, to enable a member organization to consolidate all equity trading, including customer-facing operations and the DMM unit, within a single independent trading unit.

Rule 98(c) sets forth specified restrictions to operating a DMM unit.⁶ Among other requirements, Rule 98(c)(4) provides that any interest entered into Exchange systems by the DMM unit in DMM securities⁷ must be identifiable as DMM unit interest. Current Rule 98(c)(4) was designed to ensure that all trading activity by a DMM unit in DMM securities at the Exchange is available for review. As discussed below, under Rule 98(c)(5), DMMs would continue to be required to submit information to the Exchange to make available to the Exchange for review all trading activity by a DMM unit in DMM securities. The Exchange did not specify which system(s) a DMM unit must use because, as the Exchange's trading systems continue to evolve, the manner by which interest would be identified as DMM interest could change. Accordingly, the current rule requires any trading for the account of the DMM unit in DMM securities at the Exchange to be identifiable as DMM interest.

Rule 98(c)(5) provides that a member organization must provide the Exchange

⁶ As defined in Rule 98(b)(1), the term "DMM unit" means a trading unit within a member organization that is approved pursuant to Rule 103 to act as a DMM unit.

⁷ As defined in Rule 98(b)(2), the term "DMM securities" means any securities allocated to the DMM unit pursuant to Rule 103B or other applicable rules.

with real-time net position information for trading in DMM securities by the DMM unit and any independent trading unit of which it is a part, at such times and in the manner prescribed by the Exchange. Rule 98(d) further specifies that the DMM rules⁸ will apply only to a DMM unit's quoting or trading in its DMM securities for its own accounts at the Exchange. Accordingly, the DMM rules do not apply to any customer orders that a member organization that operates a DMM unit sends to the Exchange as agent.⁹

Because Rule 98(c)(4) currently requires that any interest entered into Exchange systems by the DMM unit in DMM securities be identifiable as DMM interest, a DMM unit integrated with a customer-facing unit that would send customer orders in DMM securities to the Exchange as proprietary interest must identify it as DMM interest. As a result, although agency orders are not subject to DMM rules, customer-driven interest entered on a proprietary basis is subject to all DMM rules.

To date, none of the member organizations operating a DMM have integrated a DMM unit with a customer-facing trading unit and the Exchange believes that the current rule requiring customer-driven orders that are represented on a proprietary basis be designated as DMM interest has served as a barrier to achieving such integration.¹⁰

⁸ As defined in Rule 98(b)(3), the term "DMM rules" means any rules that govern DMM or DMM unit conduct or trading.

⁹ See 2014 Notice, supra note 5 at 19152 (specifying that Rule 98(d) was added because DMM rules are not applicable to any customer orders routed to the Exchange by a member organization as agent).

¹⁰ The Exchange understands it is a common practice among market makers that operate as wholesalers, and thus have their own customer orders as well as retail order flow from another broker dealer, to facilitate the execution of customer order flow by representing it on a proprietary basis when such orders are routed to an exchange. Once a customer-driven order that has been represented on a proprietary basis on an exchange has been executed, the market maker uses the position acquired on the Exchange to fill the customer order either on a riskless-

Specifically, there are certain scenarios when the rules governing DMMs may conflict with a member organization's obligations to its customers. For example, DMMs are not permitted to enter Market Orders, MOO Orders, CO Orders, MOC Order, LOC Orders, or orders with Sell "Plus" – Buy "Minus" Instructions.¹¹ But to meet customer instructions, a customer-driven order entered by a member organization on a proprietary basis may need to be one of these order types. As another example, DMMs are restricted from engaging in specified trading in the last ten minutes of trading before the close of trading.¹² But a member organization may have a best execution obligation to route a customer-driven order to the Exchange in the last ten minutes of trading.

Proposed Amendments

The Exchange proposes to amend Rule 98 to better reflect how member organizations that integrate DMM unit operations with customer-facing operations may facilitate customer-driven order flow to the Exchange in DMM securities. As noted above, one of the intended goals of the 2014 Filing was to permit member organizations to integrate DMM unit operations with other market-making operations, including customer-facing units. However, as discussed above, subjecting customer order flow that is entered on a proprietary basis to DMM rules may be inconsistent with a member organization's obligations to its customers, and thus continue to serve as a barrier to

principal basis or with price improvement to the customer.

¹¹ See Rule 104(b)(vi).

¹² See Rule 104(g)(i)(A)(III) (defining Prohibited Transactions). Specifically, a DMM with a long position in a security is prohibited from making a purchase in a security that results in a new high price on the Exchange for the day, and a DMM with a short position in a security is prohibited from making a sale in such security that results in a new low price for the day.

integrating DMM units within a member organization. Accordingly, the Exchange proposes to amend Rule 98 to facilitate better integration of DMM units with a member organization's existing customer-facing market-making trading units by specifying that, as with agency orders, customer-driven orders that are entered on a proprietary basis by the DMM unit would not be required to be designated as DMM interest.

The Exchange proposes to amend Rule 98 to provide that proprietary interest that is entered by a DMM unit for the purposes of facilitating customer orders would not be required to be designated as DMM interest. The Exchange proposes to replace the phrase "any interest" with the phrase "proprietary interest" in Rule 98(c)(4) to clarify that the existing rule only governs proprietary interest of a DMM unit, i.e., interest for the account of the member organization. As further proposed, the Exchange would amend Rule 98(c)(4) to provide that proprietary interest entered into Exchange systems by the DMM unit in DMM securities would not be required to be identifiable as DMM unit interest if such interest is (1) on a riskless principal basis, or on a principal basis to provide price improvement to the customer, and (2) for the purposes of facilitating the execution of an order received from a customer (whether its own customer or the customer of another broker-dealer). The Exchange proposes to define such interest as a "customer-driven order."

The proposed definition of "customer-driven order" is not a novel concept in that other SROs rules define the concept of a proprietary order being entered to facilitate a customer order. For example, Supplementary Material .03 to FINRA Rule 5320 defines the term "facilitated order" to mean a proprietary trade that is for the purposes of facilitating the execution, on a riskless principal basis, of an order from a customer

(whether its own customer or another broker-dealer).¹³ The Exchange proposes a distinction for the definition of “customer-driven order” in Rule 98 as compared to the Rule 5320 definition of “facilitated order” because, as proposed, a customer-driven order could be entered, not only on a riskless principal basis, but also on a principal basis so the member organization could provide price improvement to the customer. In either case, the member organization entering the customer-driven order would need to have received a customer order before entering a customer-driven order at the Exchange.¹⁴

The proposed rule change is designed to reflect how member organizations handle customer orders, which in many circumstances, are routed to an exchange on a proprietary basis to facilitate execution of a customer’s order. Therefore, the Exchange believes that the proposed amendment is consistent with the current rule, which does not require agency orders entered by the member organization that operates a DMM unit to be subject to DMM rules.¹⁵

The Exchange further proposes to amend Rule 98(c)(4) to specify that a DMM unit must use unique mnemonics that identify to the Exchange its customer-driven orders in DMM securities. Such mnemonics may not be used for trading activity at the Exchange in DMM securities that are not customer-driven orders, but may be used for trading activities in securities not assigned to the DMM. The Exchange believes that requiring a separate mnemonic for customer-driven orders would assist the Exchange in

¹³ See also Supplementary Material .03 to NYSE Rule 5320.

¹⁴ If a customer-driven order, as defined in Rule 98(c)(4), is not handled on a riskless principal basis, it would not be eligible for the riskless principal exception to the prohibition against trading ahead of customer orders as specified in Rule 5320.

¹⁵ See *supra* note 9.

monitoring DMM unit compliance with the proposed rule.¹⁶

The Exchange further proposes to amend Rule 98(d) to specify which rules would be applicable to trading by the DMM unit. As proposed, the rules, fees, or credits applicable to DMM quoting or trading activity would apply only to a DMM unit's quoting or trading in its DMM securities for its own account at the Exchange that has been identified as DMM interest. In addition, consistent with the proposal that customer-driven orders would not be required to be designated as DMM interest, the Exchange proposes to add text to Rule 98(d) to state that customer-driven orders for the account of a DMM unit that have not been identified as DMM interest would not be subject to DMM rules or be eligible for any fees or credits applicable to DMM quoting or trading activity.¹⁷ In addition, such customer-driven orders could not be aggregated with interest that has been identified as DMM interest for purposes of any DMM-related fees or credits or DMM quoting obligations specified in Rule 104(a). This proposed rule text would provide that customer-driven orders not designated as DMM interest would not be subject to DMM rules, which, as described above, include restrictions on availability of certain order types and entry of specified orders during the last ten minutes of trading. Because a customer-driven order that has not been designated as DMM interest would not be

¹⁶ The Exchange requires a member to use a different mnemonic for its SLP-Prop trading activity in assigned SLP securities than it uses for such member's trading in assigned SLP securities that is not SLP-Prop trading. Using different mnemonics allows the Exchange to identify SLP-Prop trading activity in a member organization's assigned SLP securities. A member organization may use the same mnemonic for its trading activity in securities not assigned to an SLP as it uses for its SLP-Prop trading in assigned SLP securities. See Rule 107B(c)(2).

¹⁷ Customer-driven orders would be eligible for any fees or credits applicable to equity transactions at the Exchange that are not DMM or Floor broker trades. See NYSE Price List, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

subject to DMM rules, it would also not be eligible for a parity allocation applicable for DMMs pursuant to Rule 72(c) or be used to assist a DMM in meeting its quoting or market maintenance obligations, or be eligible for DMM fees or credits.

The Rule 98(c)(5) obligation to provide the Exchange with real-time net position information in DMM securities would continue to be applicable to the DMM unit's position in DMM securities together with any position of a Regulation SHO independent trading unit of which the DMM unit may be included, regardless of whether they are positions resulting from trades in away markets, trades as a result of DMM interest entered at the Exchange, or customer-driven orders routed to the Exchange that were not identified as DMM interest.¹⁸ For example, if a DMM unit is combined with market-

¹⁸ Under Regulation SHO, determination of a seller's net position is based on the seller's position in the security in all of its accounts, absent aggregation unit treatment under Rule 200(f) of Regulation SHO. See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48010, n.22 (Aug. 6, 2004); see also Securities Exchange Act Release No. 48709 (Oct. 29, 2003), 68 FR 62972, 62991 and 62994 (Nov. 6, 2003); Letter from Richard R. Lindsey, Director, Division of Market Regulation, to Roger D. Blanc, Wilkie Farr & Gallagher, SEC No-Action Letter, 1998 SEC No-Act. LEXIS 1038, p. 5 (Nov. 23, 1998); Securities Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24419 n.47 (June 9, 1992); Securities Exchange Act Release No. 27938 (Apr. 23, 1990), 55 FR 17949, 17950 (Apr. 30, 1990).

The Commission adopted a narrow exception to Regulation SHO's "locate" requirement only for market makers engaged in bona-fide market making in the security at the time they effect the short sale. See 17 CFR 242.203(b)(2)(iii); see also Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (Aug. 6, 2004); Securities Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61698-9 (Oct. 17, 2008). Broker-dealers would not be able to rely on the Exchange's or any self-regulatory organization's designation of market marking for eligibility for the bona-fide market making exception to the "locate" requirement, as such designations are distinct and independent from Regulation SHO. Further, the Exchange's designation of proprietary interest or any exclusion from proprietary interest for purposes of NYSE rules is not relevant for purposes of Regulation SHO. Eligibility for the bona-fide market making exception depends on the facts and circumstances and a determination of bona-fide market making is based on the Commission's factors outlined in the

making desks that are trading on away markets and that route customer-driven orders to the Exchange in DMM securities that are not identified as DMM interest, the member organization would be required to report the position of the entire DMM unit in DMM securities, not only the DMM's Exchange-traded positions resulting from DMM interest. The Exchange also proposes a non-substantive amendment to Rule 98(c)(5) to delete the term "for trading," which the Exchange believes is extraneous rule text.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁹ that an Exchange have rules that are designed to promote the just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by providing greater specificity in Rule 98 regarding which proprietary interest would be required to be entered as DMM interest.

The Exchange believes that the proposed amendment to define the term "customer-driven order" to be proprietary interest of a DMM that is for the purposes of facilitating the execution of an order received from a customer (whether its own customer or the customer of another broker-dealer) on a riskless principal basis or on a principal basis to provide price improvement to the customer reflects the current reality of how

aforementioned Regulation SHO releases. It should also be noted that a determination of bona-fide market making is relevant for the purposes of the close-out obligations under Rule 204 of Regulation SHO. See 17 CFR 242.204(a)(3).

¹⁹ 15 U.S.C. 78f(b)(5).

broker-dealers facilitate customer orders that are routed to an exchange. Specifically, after receiving a customer order, such customer order is routed to an exchange on a proprietary basis, and once an execution is received from an exchange, the execution is provided to the customer either on a riskless principal basis or with price improvement. Facilitating customer orders on a proprietary basis is not a novel concept and serves as the basis of the definition of the term “facilitated order” in Supplementary Material .03 to FINRA Rule 5320. While the Exchange proposes that customer-driven orders for the purposes of Rule 98 would not be required to be executed only on a riskless principal basis, but could also be executed on a principal basis to provide price improvement to the customer, this difference does not alter the premise of how member organizations facilitate customer orders, as already established in Rule 5320.03. Because the proposed definition is narrowly defined to reflect how customer orders are facilitated on a proprietary basis when routed to an exchange, the Exchange believes that the proposed amendment to Rule 98(c)(4) to define the term “customer-driven order” would remove impediments to and perfect the mechanism of a free and open market.

The Exchange believes that requiring a DMM unit to use unique mnemonics to identify customer-driven orders in DMM securities would promote just and equitable principles of trade because requiring such orders to be entered using unique mnemonics would assist the Exchange in monitoring DMM unit compliance with the proposed rule.

The Exchange further believes that providing DMM units with a choice of whether to designate a customer-driven order as DMM interest would remove impediments to and perfect the mechanism of a free and open market because certain DMM rules may conflict with a broker-dealer’s obligation to its customers. As discussed

in the 2014 Filing, agency orders entered by a member organization that operates a DMM unit are not subject to DMM rules.²⁰ Yet, if that same customer order were routed to the Exchange on a proprietary basis, which is the manner by which broker-dealers may handle customer order flow, it would be subject to DMM rules. Accordingly, because Rule 98 does not currently require agency flow to be subject to DMM rules, the Exchange believes it is consistent with the protection of investors and the public interest that agency flow that is facilitated by a member organization on a proprietary basis at the Exchange would similarly not be required to be subject to DMM rules.

The proposed rule change would further be consistent with the protection of investors and the public interest because it would enable customer-driven orders to not be subject to DMM rules and eliminate any conflict with customer instructions or best execution obligations. The Exchange notes that this proposed rule change would not alter in any way a member organization's existing obligations under Section 15(g) of the Act,²¹ Regulation SHO,²² Rule 5320, or to maintain policies and procedures to assure that a member organization does not engage in any frontrunning of customer order information in violation of Exchange, FINRA, or federal securities laws.

The Exchange further believes that the proposed amendments to Rule 98(d) would remove impediments to and perfect the mechanism of a free and open market by promoting transparency in Exchange rules regarding which rules, fees or credits applicable to DMM quoting or trading activity would be applicable to which interest.

²⁰ See supra note 9.

²¹ 15 U.S.C. 78o(g).

²² 17 CRF 242.201.

More specifically, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market to provide specificity in Exchange rules that customer-driven orders that have not been designated as DMM interest would not be subject to the DMM rules and also would not be eligible for DMM fees or credits or to be aggregated with DMM interest for purposes of any DMM-related fees or credits or DMM quoting obligations.

Finally, the Exchange believes that the proposed amendment to Rule 98(c)(5) would remove impediments to and perfect the mechanism of a free and open market by removing extraneous rule text, thus promoting simplicity in Exchange rules.

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. The proposed rule change is designed to be pro-competitive because it would remove a restriction unique to DMMs as specified in Rule 98, thus enabling existing customer-facing market making units to operate as a DMM unit at the Exchange without needing to change the manner by which they may facilitate customer orders on a proprietary basis at an exchange.

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

The Exchange respectfully requests accelerated effectiveness of this proposed rule

change pursuant to Section 19(b)(2) of the Act.²³ The Exchange believes that there is good cause for the Commission to accelerate effectiveness because the proposed rule change is consistent with the goal of the 2014 Filing to exclude agency orders entered by a member organization that operates a DMM unit from being subject to DMM rules. The proposed rule change is designed to reflect how member organizations represent agency orders and narrowly defines a class of proprietary interest that is entered to facilitate customer orders from being required to be subject to DMM rules. Moreover, the proposed definition of “customer-driven order” is not novel, as is it based on the existing definition of “facilitated order” set forth in Supplementary Material .03 to Rule 5320 and Supplementary Material .03 to FINRA Rule 5320, which already describe how proprietary orders can be entered to facilitate a customer order. The Exchange believes that difference between the proposed Rule 98 definition of “customer-driven order” and the Rule 5320 definition of “facilitated order” is not material because, if a “customer-driven order” under Rule 98 is not executed on a riskless principal basis, it would still be subject to the requirements of Rule 5320 and would not be eligible for the riskless principal exception.

The Exchange further believes that providing DMMs with the choice of whether to designate customer-driven orders as DMM interest would permit member organizations operating DMM units to facilitate customer-based order flow at the Exchange without such orders being restricted by DMM obligations, which may be contrary to customer instructions or best execution obligations. The Exchange further believes that the proposed rule change would apply DMM rules fairly because customer-

²³ 15 U.S.C. 78s(b)(2).

driven orders not designated as DMM interest, would not be subject to the obligations, nor be eligible for the benefits, applicable to DMM interest.

Finally, the Exchange believes there is good cause to accelerate effectiveness of this proposed rule change because it would promote competition on the Exchange. As has been previously announced, additional member organizations are seeking to become approved as DMMs.²⁴ The proposed rule change would facilitate the transition of DMM responsibilities to new entrants that engage in customer-facing market making, thereby promoting competition among member organizations seeking to be approved as a DMM on the Exchange.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-16 on the subject line.

²⁴ See "Citadel Securities to become #1 Designated Market Maker on NYSE," available at <http://www.citadelsecurities.com/news/citadel-securities-become-1-designated-market-maker-nyse/>; and "GTS to become Designated Market Maker on the New York Stock Exchange," available at <http://gtsx.com/in-the-news/details/gts-to-become-designated-market-maker-on-the-new-york-stock-exchange>.

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-2016-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 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-NYSE-2016-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

²⁵ 17 CFR 200.30-3(a)(12).

Robert W. Errett
Deputy Secretary

Additions: Underlined

Additions proposed in Amendment 1 to the Filing: Double-underlined

Deletions: [Bracketed]

Rules of New York Stock Exchange LLC

Rule 98. Operation of a DMM Unit

(c) Operation of a DMM unit.

- (4) Any proprietary interest entered into Exchange systems by the DMM unit in DMM securities must be identifiable as DMM unit interest, unless such proprietary interest is for the purposes of facilitating the execution of an order received from a customer (whether the DMM's own customer or the customer of another broker-dealer) and is on a riskless principal basis, or on a principal basis to provide price improvement to the customer (a "customer-driven order"). A DMM unit must use a unique mnemonic that identifies to the Exchange its customer-driven orders in DMM securities. A mnemonic used to identify a DMM's customer-driven orders in DMM securities may not be used for trading activity at the Exchange in DMM securities that are not customer-driven orders, but may be used for trading activities in securities not assigned to the DMM.
- (5) The member organization must provide the Exchange with real-time net position information [for trading] in DMM securities by the DMM unit and any independent trading unit of which it is part at such times and in the manner prescribed by the Exchange.
- (6) The DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE MKT LLC equities or options trading floors in related products, unless specifically permitted in Exchange rules.
- (7) The member organization shall maintain information barriers between the DMM unit and any investment banking or research departments of the member organization. No DMM or DMM unit may be directly supervised or controlled by an individual associated with an approved person or the member organization who is assigned to any investment banking or research departments.
- (d) The [DMM] rules, fees or credits applicable to DMM quoting or trading activity will apply only to [the] a DMM unit[s]'s quoting or trading in [their] its DMM securities for [their] its own account[s at the Exchange] that has been identified as DMM

interest. Customer-driven orders for the account of a DMM unit that have not been identified as DMM interest will not be subject to DMM rules or be eligible for any fees or credits applicable to DMM quoting or trading activity and may not be aggregated with interest that has been identified as DMM interest for purposes of any DMM-related fees or credits or DMM quoting obligations specified in Rule 104(a).

Additions: Underlined

Deletions: [Bracketed]

Rules of New York Stock Exchange LLC

Rule 98. Operation of a DMM Unit

(c) Operation of a DMM unit.

- (4) Any proprietary interest entered into Exchange systems by the DMM unit in DMM securities must be identifiable as DMM unit interest, unless such proprietary interest is for the purposes of facilitating the execution of an order received from a customer (whether the DMM's own customer or the customer of another broker-dealer) and is on a riskless principal basis, or on a principal basis to provide price improvement to the customer (a "customer-driven order"). A DMM unit must use a unique mnemonic that identifies to the Exchange its customer-driven orders in DMM securities. A mnemonic used to identify a DMM's customer-driven orders in DMM securities may not be used for trading activity at the Exchange in DMM securities that are not customer-driven orders, but may be used for trading activities in securities not assigned to the DMM.
- (5) The member organization must provide the Exchange with real-time net position information [for trading] in DMM securities by the DMM unit and any independent trading unit of which it is part at such times and in the manner prescribed by the Exchange.
- (6) The DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE MKT LLC equities or options trading floors in related products, unless specifically permitted in Exchange rules.
- (7) The member organization shall maintain information barriers between the DMM unit and any investment banking or research departments of the member organization. No DMM or DMM unit may be directly supervised or controlled by an individual associated with an approved person or the member organization who is assigned to any investment banking or research departments.
- (d) The [DMM] rules, fees or credits applicable to DMM quoting or trading activity will apply only to [the] a DMM unit[s]'s quoting or trading in [their] its DMM securities for [their] its own account[s at the Exchange] that has been identified as DMM interest. Customer-driven orders for the account of a DMM unit that have not been

identified as DMM interest will not be subject to DMM rules or be eligible for any fees or credits applicable to DMM quoting or trading activity and may not be aggregated with interest that has been identified as DMM interest for purposes of any DMM-related fees or credits or DMM quoting obligations specified in Rule 104(a).
