SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64039; File No. SR-NYSE-2011-09)

March 4, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Exchange Rule 103B to Modify the Application of the Exchange's Designated Market Maker ("DMM") Allocation Policy in the Event of a Merger Involving One or More Listed Companies

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 February 24, 2011, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 103B to modify the application of the Exchange's Designated Market Maker ("DMM") allocation policy in the event of a merger involving one or more listed companies. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, on the Commission's website at http://www.sec.gov, and www.nyse.com.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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

Policy Note VI(D)(1) to Exchange Rule 103B provides that when two NYSE listed companies merge, the post-merger listed company is assigned to the DMM in the company that is determined to be the survivor-in-fact (dominant company). Under Exchange policy, the determination of which company is the survivor-in-fact is based on which of the merging companies provides the chief executive officer and a majority of the board of directors of the post-merger listed company. The policy focuses on the CEO and the make-up of the board of the post-merger listed company rather than on any criteria based on the relative sizes of the pre-merger companies because the Exchange believes that the post-merger listed company's CEO and board will have the relationship with the DMM going forward and should therefore be comfortable with the DMM allocated to the post-merger listed company. Under the Exchange policy, no survivor-in-fact will be found if one of the merging companies provides the CEO and the other merging company provides a majority or half of the board of the post-merger listed company. Where no survivor-in-fact can be identified, the post-merger listed company may select one of the units trading the merging companies without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process pursuant to Exchange Rule 103B, Section III. In addition, Policy Note VI(D)(3) provides that in situations involving the merger of a listed company and an unlisted company, where the unlisted company is determined to be the survivor-in-fact, the post-merger listed

company may choose to remain registered with the DMM unit that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to Exchange Rule 103B.[4]

The Exchange believes that the decision as to how the stock of a post-merger listed company is allocated should be made solely by the post-merger listed company itself, rather than on the basis of which company is determined to be the survivor-in-fact in the merger. The Exchange believes that it is important that the CEO and board of the post-merger listed company are comfortable with its assigned DMM and that it therefore makes sense to give the post-merger listed company as much control as possible over the allocation decision. Consequently, the Exchange proposes to amend Policy Note VI(D)(1) and (3) to provide that in all listed company mergers, either between two listed companies or a listed company and an unlisted company, the management of the post-merger listed company will be able to choose to retain either of the incumbent DMMs (in the case of a merger between two listed companies) or the incumbent DMM (in the case of a merger between a listed company and an unlisted company) or request to have the security referred for reallocation. In no case will the policy dictate that a post-merger listed company must retain an incumbent DMM unless it chooses to do so. The Exchange notes that Section 806.01 of the NYSE Listed Company Manual provides that a listed company can request a change of DMM at any time and that giving post-merger listed companies control over the allocation decision in connection with a merger is consistent with that approach. The

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[4] A company seeking to choose a DMM through the allocation process must select a minimum of three DMM units to interview from the pool of DMM units eligible to participate in the allocation process and must notify the Exchange of its choice of DMM within two business days of the interviews. Alternatively, the company can delegate to the Exchange the authority to select its DMM. In that case, the selection is made by an Exchange Selection Panel ("ESP") comprised of senior management of the Exchange, Exchange floor operations staff and non-DMM Executive Floor Governors or Floor Governors.

Exchange also notes that the proposed rule change would only affect a very small number of companies and their DMMs, as it would be applicable only in the case of a merger transaction where one of the two merging companies would otherwise be deemed the "survivor-in-fact" under Exchange policies.

The Exchange notes that Policy Note VI(D)(1) and (3) both provide that DMM units that are ineligible to receive a new allocation due to their failure to meet the requirements of Exchange Rule 103B, Section II(D) and (E) will remain eligible to be selected pursuant to Policy Note VI(D)(1) or (3), as applicable. The Exchange proposes to amend the language in each section to clarify that its intent is that in such cases the applicable DMM unit will be eligible to be selected in its capacity as the DMM for one of the two pre-merger listed companies (in the case of a merger between two listed companies) or in its capacity as DMM of the pre-merger listed company (in the case of a merger between a listed company and an unlisted company), but will not be eligible to participate in the allocation process if the post-merger company requests that the matter be referred for allocation through the allocation process pursuant to NYSE Rule 103B, Section III . In the event that such a situation were to arise, the Exchange would inform the listed company of such DMM unit's ineligibility under Exchange Rule 103B, Section II(D) or (E).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the "Act"),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular in that it is designed to promote just and equitable

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

6 15 U.S.C. 78a.

7 15 U.S.C. 78f(b)(5).

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 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 amendments are consistent with Section 6(b)(5) of the Act in that their sole purpose is to provide more control over the DMM allocation process to companies involved in mergers, all DMMs are subject to the same Exchange rules and oversight when conducting their DMM activities, and the proposed amendments are consistent with Section 806.01 of the Listed Company Manual as previously approved by the Commission.

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

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

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2011-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2011-09. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSE-2011-09 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.[8]

Cathy H. Ahn
Deputy Secretary

[8] 17 CFR 200.30-3(a)(12).