

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66047; File No. SR-NYSE-2011-64)

December 23, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 103B, Which Governs the Allocation of Securities to DMMs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that December 15, 2011, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 103B, which governs the allocation of securities to DMMs. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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

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

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

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

1. Purpose

The Exchange proposes to amend Rule 103B, which governs the allocation of securities to DMMs. Specifically, as described in more detail below, the Exchange proposes to extend the effective period of an allocation decision from six to twelve months, to permit an issuer to submit a written letter to an Exchange Selection Panel (“ESP”) expressing a preference for a DMM if the issuer has delegated authority to the Exchange to select the DMM unit, align the quiet period rule, and to make other conforming changes.

First, the Exchange proposes to amend Rule 103(VI)(H), the Allocation Sunset Policy, to extend the effective period of an allocation decision from six to twelve months. The Exchange believes that extending the time period that allocation decisions remain effective is necessary because in some instances it is taking initial public offerings (“IPOs”) longer than six months to occur after the allocation process. Extending the effective period to twelve months will eliminate the need for a new IPO listing to repeat the allocation process if the six-month effective period has lapsed and thereby contribute to efficiency in the allocation process.

Second, in those instances in which an issuer has delegated authority to the Exchange to select the DMM unit for the issuer under Rule 103B(III)(B), the Exchange proposes to permit the ESP to consider, as part of the selection process, written submissions from the issuer that express the issuer’s preference.<sup>3</sup> The written submission from the issuer would be non-binding on the ESP. The Exchange previously allowed a listing company to supply a letter to an allocation committee, but eliminated this part of the rule when the Exchange streamlined the allocation

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<sup>3</sup> Under Rule 103B(III), an issuer may either select its DMM unit directly or delegate authority to the Exchange to select its DMM unit.

process.<sup>4</sup> The Exchange believes that allowing the issuer to provide a non-binding, written submission would better inform the ESP during the allocation process.

Third, the Exchange also proposes to align the quiet period rule text so that the quiet period is triggered at the appropriate point, whether the issuer selects the DMM unit itself or delegates authority to the Exchange to select the DMM unit. Currently, Rule 103B(III)(A)(2) provides that, if the issuer selects the DMM unit, no DMM unit, or any individuals acting on its behalf, may have any contact with any listing company once the Exchange provides written notice to DMM units that the listing company is listing on the Exchange. Rule 103B(III)(B)(1) provides that if the DMM unit is selected by the Exchange, then individuals associated with the DMM units may not communicate about the DMM unit selection process with members of the ESP from the time the issuer delegates the assignment responsibility to the Exchange until the ESP announces its assignment decision, but doesn't address communication with the issuer. To make the quiet periods more consistent regardless of the issuer's election, the Exchange proposes to amend Rule 103B(III) to provide that after the Exchange provides written notice to DMM units that the issuer is listing on the Exchange, no individual associated with a DMM unit may contact the issuer, or the ESP if applicable, until the allocation is made, except as otherwise provided in the Rule (e.g., as permitted during the interview). The Exchange further proposes to add that, consistent with the manner by which the issuer selects a DMM unit, the ESP may also interview individuals associated with the DMM unit. The Exchange proposes a conforming change to delete the current quiet period text in Rule 103B(III)(A)(2) and Rule 103B(III)(B)(1).

Finally, the Exchange proposes to amend Rule 103B(III)(B)(1). Currently, the Rule provides that an ESP consist of: (a) at least one member of the Exchange's Senior Management,

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<sup>4</sup> See Securities Exchange Act Release No. 58857 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR-NYSE-2008-52).

as designated by the Chief Executive Officer of the Exchange or his or her designee; (b) any combination of two Exchange Senior Management or Exchange Floor Operations Staff, to be designated by the Executive Vice-President of Exchange Floor Operations or his/her designee; and (c) any combination of three non-DMM Executive Floor Governors or non-DMM Floor Governors for a total of six members. The Exchange proposes to eliminate the reference to including non-DMM Executive Floor Governors in order to streamline the Rule. Executive Floor Governors are considered a subset of Floor Governors, and therefore both references are not necessary in the Rule.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that extending the sunset period from six to 12 months will foster cooperation and coordination with person engaged in facilitating securities transactions and will remove impediments to a free and open market because it recognizes that all IPOs may not be brought to market in a six month period and avoids repeating administrative steps in the listing process, thereby promoting efficient use of the Exchange’s resources. The proposed rule change also supports just and equitable principles of trade by providing issuers with a greater opportunity for input in the allocation process. In addition, aligning the quiet periods under the Rule will promote

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

consistency, fairness, and objectivity in the allocation process. Finally, the Exchange believes that the change to the rule text concerning the composition of the ESP is technical in nature and simply removes a redundancy.

**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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-64 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-2011-64. 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 publicly available. All submissions should refer to File Number SR- NYSE-2011-64 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.<sup>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).