

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 73919; File No. SR-NYSE-2014-71)

December 23, 2014

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot, Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or July 31, 2015

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 18, 2014, 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 extend the operation of its New Market Model Pilot, currently scheduled to expire on December 31, 2014, until the earlier of Securities and Exchange Commission (“Commission”) approval to make such pilot permanent or July 31, 2015. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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

The Exchange proposes to extend the operation of its New Market Model Pilot (“NMM Pilot”),<sup>4</sup> currently scheduled to expire on December 31, 2014, until the earlier of Commission approval to make such pilot permanent or July 31, 2015.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE MKT LLC.<sup>5</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46). See also Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR-NYSE-2009-100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR-NYSE-2009-113) (extending Pilot to March 30, 2010); 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR-NYSE-2010-25) (extending Pilot to September 30, 2010); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR-NYSE-2010-61) (extending Pilot to January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR-NYSE-2010-86) (extending Pilot to August 1, 2011); 64761 (June 28, 2011), 76 FR 39147 (July 5, 2011) (SR-NYSE-2011-29) (extending Pilot to January 31, 2012); 66046 (December 23, 2011), 76 FR 82340 (December 30, 2011) (SR-NYSE-2011-65) (extending Pilot to July 31, 2012); 67494 (July 25, 2012), 77 FR 45408 (July 31, 2012) (SR-NYSE-2012-26) (extending Pilot to January 31, 2013); 68558 (January 2, 2013), 78 FR 1288 (January 8, 2013) (SR-NYSE-2012-75) (extending Pilot to July 31, 2013); 69813 (June 20, 2013), 78 FR 38753 (June 27, 2013) (SR-NYSE-2013-43) (extending Pilot to January 31, 2014); 71345 (January 17, 2014), 79 FR 4221 (January 24, 2014) (SR-NYSE-2014-01) (extending Pilot to July 31, 2014); and 72627 (July 16, 2014), 79 FR 42598 (July 22, 2014) (SR-NYSE-2014-33) (extending Pilot to December 31, 2014).

<sup>5</sup> See SR-NYSEMKT-2014-109.

## Background<sup>6</sup>

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.<sup>7</sup> The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement<sup>8</sup> in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.<sup>9</sup>

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule ("CCS").<sup>10</sup> CCS

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<sup>6</sup> The information contained herein is a summary of the NMM Pilot. See supra note 4 for a fuller description.

<sup>7</sup> See NYSE Rule 103.

<sup>8</sup> See NYSE Rule 104.

<sup>9</sup> See NYSE Rule 60; see also NYSE Rules 104 and 1000.

<sup>10</sup> See NYSE Rule 1000.

provides the Display Book<sup>®11</sup> with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (“BBO”). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange’s BBO. During the operation of the NMM Pilot, orders or portions thereof that establish priority<sup>12</sup> retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions in order to prepare a rule filing seeking permission to make the above described changes permanent.<sup>13</sup> The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before December 31, 2014.

#### Proposal to Extend the Operation of the NMM Pilot

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market

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<sup>11</sup> The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

<sup>12</sup> See NYSE Rule 72(a)(ii).

<sup>13</sup> See supra note 4.

participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until July 31, 2015, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

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

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it

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<sup>14</sup> 15 U.S.C. 78f(b).

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

seeks to extend a pilot program that has already been approved by the Commission. The Exchange believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) the Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b-4 approval process. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>16</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that extending the operation of the NMM Pilot will enhance competition among liquidity providers and thereby improve execution quality on the Exchange. The Exchange will continue to monitor the efficacy of the program during the proposed extended pilot period.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it

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<sup>16</sup> 15 U.S.C. 78f(b)(8).

imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>19</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period so that the proposal may become operative before the pilot's expiration. The Exchange stated that an immediate operative date is necessary in order to

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

immediately implement the proposed rule change so that member organizations could continue to benefit from the pilot program without interruption after December 31, 2014.

The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from the temporary interruption in the pilot program. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative on December 31, 2014.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>22</sup>

#### 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-

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<sup>21</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(C).

2014-71 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2014-71. 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-2014-71 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>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).