

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75966; File No. SR-NYSE-2015-39)

September 22, 2015

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Supplementary Material .20 to Rule 103 to Permit Member Organizations that Operate as Designated Market Maker Units on the Exchange and Also Operate DMM Units on the NYSE MKT LLC to Make an Adjustment to Excess Net Capital

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on September 8, 2015, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Supplementary Material .20 to Rule 103 (“NYSE Rule 103.20”), to permit member organizations that operate as Designated Market Maker (“DMM”) units on the Exchange and also operate DMM units on the NYSE MKT LLC (“NYSE MKT”) to make an adjustment to Excess Net Capital. The text of 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 See 15 U.S.C. 78s(b)(1).

² See 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A., B., and C. below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend NYSE Rule 103.20, which sets forth the net liquid assets requirements for a member organization that operates as DMM a [sic] unit on the Exchange,³ to permit such DMM unit to make an adjustment to Excess Net Capital when calculating Net Liquid Assets if it also operates as a DMM unit on NYSE MKT. The proposed adjustment would permit a DMM unit to add back to its Excess Net Capital the lesser of (1) the actual haircuts under Securities and Exchange Commission (“SEC” or “Commission”) [sic] Rule 15c3-1 (the “SEC Net Capital Rule”)⁴ on its NYSE MKT DMM dealer positions, or (2) the NYSE MKT DMM tentative net capital requirement calculated according to NYSE MKT Rule 103.20 – Equities (“NYSE MKT Rule 103.20”).

³ Pursuant to Rule 2(j), a DMM unit is defined as a member organization or unit within a member organization that has been approved to act as a DMM unit under Rule 98. Pursuant to Rule 2(i), a DMM is defined as an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. All references to rules herein are to NYSE rules, unless otherwise noted.

⁴ 17 CFR 240.15c3-1.

Background and Proposed Rule Change

NYSE Rule 103.20 sets forth a Net Liquid Assets requirement for DMM units that exceed [sic] the SEC Net Capital Rule minimum net capital requirement applicable to market-making activities. The purpose of the Exchange's requirement is to reasonably assure that each DMM unit maintains sufficient liquidity to carry out its obligation to maintain a fair and orderly market in its assigned securities in times of market stress.

Rule 103.20(a) defines "Net Liquid Assets" as the sum of (A) "Excess Net Capital" and (B) "Liquidity" dedicated to the DMM unit. Excess Net Capital has the same meaning as the term excess net capital as computed in accordance with the SEC Net Capital Rule, which means the amount identified as item number 3770 of SEC Form X-17A-5 ("FOCUS Report"), except for DMM units that compute net capital under the alternative standard, for which it would mean item number 3910 of the FOCUS Report. Liquidity is defined as undrawn or actual borrowings that are dedicated to the DMM unit's business, as specified in Rule 103.20(a)(3)(A) – (C). Rule 103.20 requires that aggregate Net Liquid Assets of all DMM units equal at least \$125 million and that each DMM unit maintain or have allocated to it Net Liquid Assets that are the greater of (1) \$1 million, or (2) \$125,000 for each one-tenth of one percent (0.1%) of Exchange transaction dollar volume⁵ in its registered securities.

Pursuant to NYSE MKT Rule 103.20, DMM units on NYSE MKT are required to calculate their NYSE MKT tentative net capital ("TNC") requirement based on the greater of (i) \$1,000,000 or (ii) the haircut charges on a theoretical position of 60 trading units of each assigned NYSE MKT DMM security and 20 trading units of each assigned

⁵ The term "Exchange transaction dollar volume" means the most recent Statistical Data, calculated and provided by the NYSE on a monthly basis.

Unlisted Trading Privileges DMM security. For NYSE MKT DMM units that also operate as DMMs on the NYSE, the haircuts on NYSE MKT DMM positions as computed pursuant to the SEC Net Capital Rule are deducted in computing Net Liquid Assets under NYSE Rule 103.20. DMM units operating on NYSE and NYSE MKT therefore incorporate the market risk charges (i.e., haircuts) on the NYSE MKT positions twice: First, because the NYSE and NYSE MKT DMM capital requirements are cumulative,⁶ Excess Net Capital available to meet the requirement of NYSE Rule 103.20 must be reduced by the amount of capital needed to satisfy the NYSE MKT Rule 103.20 requirement and, second, in computing Net Liquid Assets under NYSE Rule 103.20, the determination of Excess Net Capital incorporates several adjustments, such as a reduction for haircuts on proprietary positions, including NYSE MKT DMM positions.

The Exchange accordingly proposes to add a new section (6) to NYSE Rule 103.20(b), which sets forth the minimum Net Liquid Assets requirement,⁷ to permit a DMM unit operating on both the NYSE and NYSE MKT to avoid duplicative reductions to Excess Net Capital by adding back the lesser of actual SEC Net Capital Rule haircuts on the firm's NYSE MKT DMM positions or the NYSE MKT DMM TNC requirement calculated pursuant to NYSE MKT Rule 103.20. The proposed adjustment would permit a DMM unit operating on both marketplaces to have Excess Net Capital reduced once for NYSE MKT DMM haircuts under NYSE Rule 103.20, thereby adjusting the DMM unit's

⁶ NYSE Rule 103.20(b)(2) requires that Excess Net Capital be "dedicated exclusively to the DMM unit's activities and shall not be used by other business units." Accordingly, the portion of Excess Net Capital used to meet the DMM's NYSE Rule 103.20 requirement cannot include the capital which is being used to meet the firm's NYSE MKT DMM requirement.

⁷ The Exchange also proposes to add a reference to the proposed adjustment in NYSE Rule 103.20(a)(1)(A), which defines the term "Net Liquid Assets."

capital available to meet its Net Liquid Assets requirement. The Exchange believes that this change would result in a more efficient utilization of capital by DMM units who operate on both exchanges.

The Exchange believes that the proposed change would not diminish the current levels of capital maintained by DMM units operating on both markets. The Exchange notes that it would continue to assess DMM unit financial requirements and that the Financial Industry Regulatory Authority, Inc. (“FINRA”), [sic] on behalf of the Exchange, would continue to monitor DMM unit compliance with NYSE Rule 103.20.

The Exchange proposes to notify DMM units of the implementation date of this rule change via a Member Education Bulletin.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that DMM units 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,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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 that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by reducing the financial burden on DMM units operating on both the Exchange and NYSE MKT by eliminating the requirement to apply duplicative NYSE MKT DMM dealer haircuts. The Exchange believes that permitting DMM units operating on both marketplaces to take an adjustment would prevent those units from taking NYSE MKT DMM positions into consideration twice as part of the Excess Net Capital calculation under NYSE Rule 103.20, thereby potentially lowering the DMM units' Excess Net Capital available to meet their Net Liquid Assets requirements. The Exchange believes that the proposed rule would continue to assure that DMM units have sufficient liquidity to carry out their obligations to maintain an orderly market in their assigned securities in times of market stress.

The Exchange further believes that the proposed change would protect investors and the public interest by reducing existing barriers to entry for new DMM units and mitigating the potential loss of existing DMM units. Stabilizing and increasing the pool of DMM units with a more efficient financial structure would be beneficial to the Exchange and would also enhance market quality and thereby support investor protection and public interest goals.

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 the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 change is designed to permit DMM units operating on the Exchange and NYSE MKT to make an adjustment to Excess Net Capital to add back haircuts on NYSE MKT DMM positions and avoid taking these haircuts into consideration twice, but would not affect the overall level thereof. This proposed change would eliminate a potential barrier to entry for new DMM units interested in operating on both markets, thereby promoting competition.

The Exchange notes that market makers and traders on other U.S. equity exchanges are not subject to net capital requirements beyond those required by the SEC Net Capital Rule. Nonetheless, DMM units have unique affirmative obligations and the Exchange continues to believe that it is appropriate that their financial requirements be higher than other market participants. The proposal would support competition by making DMM unit financial requirements more manageable for member organizations, including both existing and potential future DMM units, and would thereby promote greater interest in seeking DMM unit appointments on the Exchange. 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 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or 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-2015-39 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-2015-39. 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

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2015-39 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.¹⁵

Robert W. Errett
Deputy Secretary

¹⁵ See 17 CFR 200.30-3(a)(12).