

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80552; File No. SR-NYSE-2016-71)

April 28, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Amending Rule 104 to Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers from Establishing a New High (Low) Price on the Exchange in a Security the DMM has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

On October 27, 2016, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending Rule 104 to delete subsection (g)(i)(A)(III), which prohibits Designated Market Makers (“DMMs”) from establishing, during the last ten minutes of trading before the close, a new high (low) price for the day on the Exchange in a security in which the DMM has a long (short) position. The proposed rule change was published for comment in the Federal Register on November 17, 2016.<sup>3</sup>

On December 20, 2016, the Commission extended to February 15, 2017, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.<sup>4</sup> On February 15, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or

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

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

<sup>3</sup> See Securities Exchange Act Release No. 79284 (Nov. 10, 2016), 81 FR 81222 (Nov. 17, 2016).

<sup>4</sup> See Securities Exchange Act Release No. 79612 (Dec. 20, 2016), 81 FR 95205 (Dec. 27, 2016).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

disapprove the proposed rule change.<sup>6</sup> Following the Order Instituting Proceedings, the Commission received a comment letter supporting the proposal.<sup>7</sup> On March 16, 2017, the Exchange filed a response to the Order Instituting Proceedings.<sup>8</sup>

Section 19(b)(2) of the Act<sup>9</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the Federal Register on November 17, 2016.<sup>10</sup> The 180th day after publication of the notice of the filing of the proposed rule change in the Federal Register is May 16, 2017.

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<sup>6</sup> See Securities Exchange Act Release No. 80044 (Feb. 15, 2017), 82 FR 11388 (Feb. 22, 2017) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.” See *id.*, 81 FR at 11388.

<sup>7</sup> See letter to Eduardo A. Aleman, Assistant Secretary, Commission, from Stephen John Berger, Managing Director, Government and Regulatory Policy, Citadel Securities, dated May 15, 2017, available at <https://www.sec.gov/comments/sr-nyse-2016-71/nyse201671-1643039-147158.pdf>.

<sup>8</sup> See letter to Brent J. Fields, Secretary, Commission, from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange LLC, dated March 16, 2017, available at <https://www.sec.gov/comments/sr-nyse-2016-71/nyse201671-1645043-148163.pdf>.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> See *supra* note 3.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> designates July 15, 2017, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSE-2016-71).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(57).