

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86131; File No. SR-NYSE-2019-25)

June 18, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Change of Amendments to Define “Net Position Information in DMM Securities” in NYSE Rule 98(c)(5) and the “the Position of the DMM Unit” in NYSE Rule 104(g)(1)(B)

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 June 7, 2019, 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, II, and III 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 amendments to define “net position information in DMM securities” in Rule 98(c)(5) and the “the position of the DMM unit” in Rule 104(g)(1)(B). The proposed 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 received on the proposed rule change. The text of those statements may be examined at the places

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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.

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 amendments to define “net position information in DMM securities” in Rule 98(c)(5) and “the position of the DMM unit” in Rule 104(g)(1)(B).

Background

The Exchange recently amended Rules 98(c)(5) and 104(g),<sup>4</sup> and the amended rules will be implemented when the Exchange transitions trading in NYSE-listed securities to its Pillar trading platform.<sup>5</sup> As amended, Rule 104(g) provides that transactions on the Exchange by a DMM for the DMM’s account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. More particularly, amended Rule 104(g)(1)(B) prohibits DMM transactions in the last ten minutes of trading if the transaction is an “Aggressing Transaction,” i.e., the DMM reaches across the market, and, as a result, creates a new high/low price for the security on the Exchange for the day at the time of the DMM’s transaction, unless the DMM’s Aggressing Transaction:

- matches another market’s better bid or offer price;
- brings the price of a security into parity with an underlying or related security or asset; or

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<sup>4</sup> See Securities Exchange Act Release No. 85637 (April 12, 2019), 84 FR 16079, 16083 (April 17, 2019) (SR-NYSE-2018-34).

<sup>5</sup> The transition of Exchange-listed securities to the Pillar trading system is currently anticipated to begin in the third quarter of 2019. See Securities Exchange Act Release No. 85637 (April 12, 2019), 84 FR 16079, 16083 (April 17, 2019) (SR-NYSE-2018-34) (Approval Order).

- liquidates or decreases the position of the DMM unit.

As amended, Rule 98(c)(5) provides that a member organization operating a DMM unit must daily provide the Exchange with “net position information in DMM securities by the DMM unit and any independent trading unit of which it is part at such times and in the manner prescribed by the Exchange.” This requirement enables the Exchange to effectively monitor for compliance with the third exception in Rule 104(g)(1)(B) by utilizing DMM position information provided on a same-day basis for its automated surveillances.

The phrase “net position information in DMM securities” in Rule 98(c)(5) and “the position of the DMM unit” in Rule 104(g)(1)(B) are not defined in the Exchange’s rules.

#### Proposed Rule Change

The Exchange proposes to define references to DMM position information in the amended versions of Rules 98(c)(5) and 104(g) that would be implemented concurrent with the implementation of these amended rules.

First, the Exchange proposes to add a new subsection (A) to Rule 98(c)(5) that would provide that the phrase “net position information in DMM securities” in Rule 98(c)(5) means the DMM unit’s inventory of securities exclusive of pending, unexecuted orders. The proposed subsection would also make clear that, as used in Rule 98(c)(5), the phrase “net position information in DMM securities” is independent of any reference to position information in connection with an interpretation of Rule 7.16 (Short Sales) or Regulation SHO.<sup>6</sup> Finally, the proposed subsection would state that, consistent with Rule 7.16(c), a member organization must mark all sell orders as “long,” “short” or “short exempt” in accordance with the provisions of Rule 200 of Regulation SHO and related SEC FAQs 2.5, 2.5A, 2.5B, 2.5C and 2.6.

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<sup>6</sup> 17 CFR 242.200.

Second, the Exchange proposes a new subsection (i) to Rule 104(g)(1)(B) that would state that the phrase “the position of the DMM unit” in Rule 104(g)(1)(B) means the DMM unit’s inventory of securities exclusive of pending, unexecuted orders and has the same meaning as “net position information in DMM securities” in Rule 98(c)(5).

As noted, under the amended rules, the sole reason DMM position information will be relevant is for when a DMM would seek to avail itself of the third exception under amended Rule 104(g)(1)(B) for Aggressing Transactions in the last ten minutes of trading that would liquidate or decrease the DMM unit’s position. The primary purpose of amended Rule 98(c)(5) is for DMMs to provide net position information to the Exchange to facilitate the Exchange’s automated surveillance of amended Rule 104(g)(1)(B).<sup>7</sup> In order to assess whether a transaction is liquidating or decreasing a position for purposes of amended Rule 104(g)(1)(B), the Exchange must know the actual number of shares in the DMM unit’s inventory at the point in time the Aggressing Transactions was effectuated, which would necessarily exclude pending, unexecuted shares.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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<sup>7</sup> In connection with the implementation of these rules, the Exchange will publish regulatory guidance setting forth the requirement that DMMs provide net position on a daily basis but in no event later than trading day plus one (T+1).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices by facilitating the Exchange's ability to appropriately and efficiently surveil for Prohibited Transactions by DMM units in the final ten minutes of trading. Similarly, the proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by ensuring and continuing to require that DMM units provide detailed and accurate data to the Exchange pursuant to Rule 98. The proposed stated interpretation also promotes transparency and clarity so that the Exchange, DMMs, the public, and the Commission have a common understanding of the circumstances of when a DMM may avail itself of an exception to Prohibited Transactions and how DMMs will be reporting position information pursuant to Rule 98(c)(5). For the same reasons, the proposal is also designed to protect investors as well as the public interest because investors will not be harmed and in fact would benefit from this increased transparency, thereby reducing potential confusion.

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 rule change is intended to define a phrase in the Exchange's rules in order to promote clarity and greater transparency in order to avoid confusion with respect to the meaning of a DMM unit's position, and therefore would not impose any burden on competition.

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>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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, 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.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-25 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

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-2019-25. 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-25 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>13</sup>

Vanessa A. Countryman  
Acting Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).