

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-91377; File No. SR-NYSE-2021-08)

March 19, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change of New Rules Providing for the Registration and Obligations of Non-DMM Market Makers

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 12, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 new rules providing for the registration and obligations of Non-DMM Market Makers. 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 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 rules governing electronic, off-floor market makers that would not be either Designated Market Makers ("DMMs") or Supplemental Liquidity Providers ("SLPs") ("Non-DMM Market Makers"). Non-DMM Market Makers would be a new category of market participants on the Exchange and would have responsibilities different from those of DMMs and SLPs. The proposed Non-DMM Market Makers are not intended to replace DMMs or SLPs on the Exchange and would not assume any of the responsibilities already assigned to DMMs or SLPs pursuant to Exchange Rules (for example, Non-DMM Market Makers would not perform any trading floor functions such as those assigned to DMMs). Instead, for all securities that trade on the Exchange, a member organization may register as a Non-DMM Market Maker and be subject to obligations similar to those of Market Makers on NYSE Arca, Inc. ("NYSE Arca") and NYSE American LLC ("NYSE American") to, among other things, maintain continuous, two-sided trading interest in the securities in which they are registered as a Non-DMM Market Maker ("Two-Sided Obligation") and adhere to certain pricing obligations. The addition of Non-DMM Market Makers is intended to promote competition on the Exchange by providing an opportunity for member organizations to register as a Non-DMM Market Maker and become eligible for various benefits and economic incentives available to registered market makers. Non-DMM Market Makers would be subject to obligations distinct from those imposed on DMMs and SLPs under Exchange rules but would likewise contribute to displayed liquidity on the Exchange and would enhance the range and diversity of market making activity on the

Exchange, thereby promoting competition and market quality on the Exchange to the benefit of all market participants.

The Exchange proposes the following rules, based on NYSE Arca and NYSE American rules of the same number with non-substantive changes, to govern the registration and obligations of Non-DMM Market Makers on the NYSE:

- Proposed Rule 1.1(p) (definition of Market Maker Authorized Trader);
- Proposed Rule 1.1(t) (definition of Non-DMM Market Maker);
- Proposed Rule 7.20 (Registration of Non-DMM Market Makers);
- Proposed Rule 7.21 (Obligations of Market Maker Authorized Traders);
- Proposed Rule 7.22 (Registration of Non-DMM Market Makers in a Security);
- and
- Proposed Rule 7.23 (Obligations of Non-DMM Market Makers).

These proposed rules would be applicable only to the proposed new category of Non-DMM Market Makers. They would not apply to DMMs or SLPs, who would continue to be governed by existing Exchange rules applicable to those market participants.<sup>4</sup>

#### Proposed Rule Changes

##### *Rule 1.1*

Rule 1.1 sets forth definitions of terms that are used throughout the Exchange rules. The Exchange proposes to add the following definitions to the rule:

- The Exchange proposes to amend current Rule 1.1(p) to set forth the definition of “Market Maker Authorized Trader” or “MMAT.” A “Market Maker Authorized Trade” or “MMAT” would be defined as an Authorized

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<sup>4</sup> See, e.g., Rules 98, 103, 103B, 104, and 107B.

Trader (as defined in Rule 1.1(a)) who performs market making activities pursuant to Rule 7P on behalf of a Non-DMM Market Maker. This proposed rule is based on NYSE Arca Rule 1.1(aa) and NYSE American Rule 1.1E(w).

- The Exchange proposes to amend current Rule 1.1(t) to set forth the definition of “Non-DMM Market Maker.” A “Non-DMM Market Maker” would be defined as a member organization that acts as a Non-DMM Market Maker pursuant to Rule 7P. Accordingly, for purposes of Exchange rules, the term “Non-DMM Market Maker” does not include DMMs or SLPs. This proposed rule is based on NYSE Arca Rule 1.1(z) and NYSE American Rule 1.1E(v).

To accommodate the addition of these definitions, the Exchange also proposes to adjust the lettering in Rule 1.1. Specifically, current Rule 1.1(p) defining the term “Marketable” would become Rule 1.1(q), current Rule 1.1(q) defining “NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)” would become Rule 1.1(r), and so forth, with no changes to the substance of the definitions.

#### *Rule 7P, Section 2*

The Exchange proposes to amend Section 2 under Rule 7P, which is currently designated as “Reserved,” and rename it “Non-DMM Market Makers.” The Exchange proposes that the rules set forth in this section would apply only to the proposed new group of Non-DMM Market Makers and would not be applicable to DMMs or SLPs.

#### *Rule 7.20*

The Exchange proposes to add Rule 7.20 and title it “Registration of Non-DMM Market

Makers.” Proposed Rule 7.20 would set forth the requirements for member organizations to apply for registration as Non-DMM Market Makers. The Exchange proposes that its Non-DMM Market Makers have the same registration requirements as Market Makers on NYSE Arca and NYSE American. Accordingly, the Exchange’s proposal is based on NYSE Arca Rule 7.20-E and NYSE American Rule 7.20E without substantive differences. Consistent with the requirements set forth in the NYSE Arca and NYSE American rules, the Exchange proposes to require member organizations interested in acting as Non-DMM Market Makers to submit an application to the Exchange. Proposed Rule 7.20 would also set forth the criteria the Exchange may consider in determining whether to approve or disapprove a prospective Non-DMM Market Maker’s application and specify how a Non-DMM Market Maker’s registration may be suspended, terminated, or withdrawn.

The Exchange notes two non-substantive differences from the NYSE Arca rules relating to the references to the Exchange’s disciplinary rules. First, in proposed Rule 7.20(c), the Exchange proposes to refer to the process described in the NYSE Rule 9500 Series instead of NYSE Arca Rule 10.14. Second, in proposed Rule 7.20(e), the Exchange proposes to refer to the process set forth in the NYSE Rule 9200 Series instead of NYSE Arca Rule 10.0 and the NYSE Arca Rule 10.9000 Series.

#### *Rule 7.21*

The Exchange proposes to add Rule 7.21 and title it “Obligations of Market Maker Authorized Traders.” Proposed Rule 7.21 would provide that Market Maker Authorized Traders (“MMATs”) are permitted to enter orders only for the account of the Non-DMM Market Maker for which they are registered. In addition, the proposed rule would specify the registration requirements for MMATs and the procedures for suspension and withdrawal of registration of

MMATs, both of which the Exchange proposes to base on the NYSE Arca and NYSE American rules pertaining to the obligations of MMATs. Specifically, the proposed rule would provide that a Non-DMM Market Maker must submit an application to the Exchange to register an associated person as an MMAT. An MMAT must meet certain requirements, and a Non-DMM Market Maker must ensure that its MMATs are qualified to perform market making activities. Proposed Rule 7.21 also provides that the Exchange may suspend or withdraw an MMAT's registration. Accordingly, this proposed rule is based on NYSE Arca Rule 7.21-E and NYSE American Rule 7.21E without any substantive differences.

#### *Rule 7.22*

The Exchange proposes to add Rule 7.22 and title it "Registration of Non-DMM Market Makers in a Security." Proposed Rule 7.22 would set forth the process for Non-DMM Market Makers to become registered in a security and the factors the Exchange may consider in approving such registration. The Exchange proposes that the registration of Non-DMM Market Makers follow the same process as is in place for Market Makers on NYSE Arca and NYSE American. Specifically, Non-DMM Market Makers may submit a request to the Exchange to be registered in a security, and the Exchange will evaluate whether to approve such registration, taking into consideration factors including the Non-DMM Market Maker's financial resources, experience in making markets, operational capability, and the character of the market for the security. Non-DMM Market Makers will generally be permitted to register in securities in which a DMM and/or SLP is also registered, subject to the Exchange's evaluation of the character of the market for a given security.<sup>5</sup>

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<sup>5</sup> Orders entered by Non-DMM Market Makers will be allocated in accordance with Rules 7.36 and 7.37 and be treated as a Book Participant. Non-DMM Market Makers will not be eligible to participate in the allocation process as a DMM Participant.

Also consistent with the rules of NYSE Arca and NYSE American, the proposed rule would also describe both termination of a Non-DMM Market Maker's registration in a security by the Exchange and voluntary termination by a Non-DMM Market Maker. Accordingly, the Exchange's proposal is based on NYSE American Rule 7.20E without substantive differences and is also substantially based on NYSE Arca Rule 7.22-E with certain exceptions.

The Exchange does not propose to adopt NYSE Arca Rule 7.22-E(c) or 7.22-E(d), which pertain to DMMs, because the Exchange has a separate set of rules governing DMMs. The Exchange also proposes to adopt a version of the rule with the non-substantive difference of replacing references to NYSE Arca Equities Rule 10 and 10.13 with references to the NYSE Rule 9200 and Rule 9500 Series, respectively.

#### *Rule 7.23*

The Exchange proposes to add Rule 7.23 and title it "Obligations of Non-DMM Market Makers." Proposed Rule 7.23 would set forth the obligation of Non-DMM Market Makers to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The proposed rule would delineate the specific responsibilities and duties of Non-DMM Market Makers, including the Two-Sided Obligation applicable to securities in which the Non-DMM Market Maker is registered and the requirement that the interest satisfying the Two-Sided Obligation be not more than the Designated Percentage (as defined in Proposed Rule 7.23) away from the National Best Bid or Offer ("NBBO"). Proposed Rule 7.23 also provides that Non-DMM Market Makers will be subject to certain minimum capital requirements and sets forth the circumstances under which a Non-DMM Market Maker could be subject to disciplinary action or suspension or revocation of registration by the Exchange for failure to comply with the course of dealings obligations set

forth in this proposed rule.

Specifically, with respect to the Two-Sided Obligation, proposed Rule 7.23(a)(1)(A) provides that Non-DMM Market Makers would be required to maintain displayed interest identified as interest meeting the Two-Sided Obligation on a continuous basis during Core Trading Hours for those securities in which the Non-DMM Market Maker is registered. Proposed Rule 7.23(a)(1)(B) provides that interest satisfying a Non-DMM Market Maker's Two-Sided Obligation must not be more than the Designated Percentage away from the then current NBBO, or if there is no NBBO, not more than the Designated Percentage away from the last reported sale for that security. With respect to minimum capital requirements, proposed Rule 7.23(a)(2) provides that Non-DMM Market Makers would be required to maintain adequate minimum capital in accordance with Rule 15c3-1 under the Act.

As proposed, Non-DMM Market Makers would occupy a role distinct from DMMs and SLPs and, accordingly, would be subject to different obligations. For example, Non-DMM Market Makers would differ from DMMs in that they would be subject to pricing obligations and financial requirements less stringent than those set forth in Rules 103, 103B, and 104 for DMMs. Whereas Non-DMM Market Makers would be required to maintain a Two-Sided Obligation as outlined above, DMMs must maintain a bid or offer at the NBBO for a certain percentage of the trading day for the securities in which they are registered, as specified in Rule 104(a)(1)(A). In addition, in order to participate in the allocation process for a specified security, DMMs must meet various quoting requirements set forth in Rule 103B.II, such as requirements to maintain a bid or offer at the NBBO for a specified percentage of time during a calendar month. With respect to financial requirements, whereas Non-DMM Market Makers are required to adhere to Rule 15c3-1 of the Act, Rule 103 Supplementary Material .20 sets forth additional requirements



pertaining to a DMM's Net Liquid Assets, including minimum Net Liquid Assets and specifications relating to the portion of a DMM's Net Liquid Assets that may be derived from Excess Net Capital.

Non-DMM Market Makers would also be different from SLPs because, among other reasons, they would not be subject to the heightened quoting requirements or monthly volume requirements applicable to SLPs pursuant to Rule 107B. For example, SLPs are required to maintain a bid or an offer at the NBBO in each of their assigned securities averaging at least 10% of the trading day as specified in Rules 107B(a) and (g). SLPs are also required, as described in Rules 107B(a) and (h), to add liquidity at a certain average daily volume in their assigned securities on a monthly basis.

Proposed Rule 7.23 is consistent with the obligations and processes for Market Makers set forth in the rules of NYSE Arca and NYSE American, and accordingly, is based on NYSE Arca Rule 7.23-E and NYSE American Rule 7.23E without any substantive differences.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</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 facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules would remove impediments to and

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market because they propose rules governing Non-DMM Market Makers that are based on the rules governing Market Makers on the Exchange's affiliated markets, NYSE Arca and NYSE American. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting continuity across affiliated exchanges, enabling market makers on the Exchange's affiliated markets to also become Non-DMM Market Makers on the Exchange by meeting the same registration requirements and by agreeing to be subject to the same obligations. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and a national market system by providing the Exchange's member organizations with the opportunity to access the benefits available to registered market makers (such as certain exemptions under Regulation SHO),<sup>8</sup> without committing to the more stringent quoting or volume requirements that apply to DMMs and SLPs. The Exchange also believes that providing for a Non-DMM Market Maker role on the NYSE would allow member organizations that are market makers on other exchanges to leverage their existing market-making strategies on the Exchange, and provide all member organizations who choose to register as Non-DMM Market Makers with enhanced opportunities to qualify for various existing credits set forth in the Exchange's Price List through increased quoting and liquidity-providing activity.<sup>9</sup> The proposed rules are also intended to serve investor protection and public interest goals by providing for a new category of market participant that will contribute to displayed liquidity, price discovery, and market quality on the Exchange. The proposed Non-DMM Market Makers are not intended

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<sup>8</sup> See, e.g., 17 CFR 242.203(b)(2)(iii) and 17 CFR 242.204(a)(3).

<sup>9</sup> To the extent Non-DMM Market Makers would be eligible for pricing relating to their role as Non-DMM Market Makers (similar to pricing currently set forth in the Exchange's Price List with respect to DMMs and SLPs), the Exchange would address such pricing in a separate proposed rule change.

to supplant the existing DMM or SLP market participants or their roles on the Exchange and would represent an additional source of displayed liquidity on the Exchange and enhance the range and diversity of market making activity on the Exchange, thereby promoting competition and market quality on the Exchange to the benefit of all market participants.

Specifically, the Exchange believes that the proposed definitions of Non-DMM Market Maker and Market Maker Authorized Trader in Rule 1.1 would remove impediments to and perfect the mechanism of a free and open market and a national market system by clearly setting forth the definitions of Non-DMM Market Maker and Market Maker Authorized Trader as those terms would be used in the additional rules proposed by the Exchange, particularly since the proposed definitions are based on rules of the Exchange's affiliates that have been approved by the Commission and would promote consistency across affiliated exchanges. The Exchange believes that defining the term "Non-DMM Market Maker" to mean a member organization that is not a DMM or SLP would also promote transparency and clarity in Exchange rules that the capitalized term of "Non-DMM Market Maker" would not also mean DMMs or SLPs.

The Exchange also believes that proposed Rules 7.20 and 7.21, which provide for the registration of Non-DMM Market Makers and Market Maker Authorized Traders, would remove impediments to and perfect the mechanism of a free and open market and a national market system because they clearly set forth the requirements and process for a member organization to register as a Non-DMM Market Maker or Market Maker Authorized Trader on the Exchange. The proposed rule change would also promote just and equitable principles of trade by implementing the same registration process and requirements, for the same category of market participants, as on affiliated exchanges, which requirements have already been approved by the Commission. Proposed Rules 7.20 and 7.21 would also protect investors and the public interest

by ensuring that Non-DMM Market Makers and Market Maker Authorized Traders are subject to uniform, objective requirements relating to their ability to contribute to the maintenance of fair and orderly markets on the Exchange and that their registration may be suspended or withdrawn should they fail to meet those requirements.

The Exchange believes that proposed Rule 7.22, providing for the registration of a Non-DMM Market Maker in a security, would similarly remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements and process for Non-DMM Market Makers to register to trade a specific security on the Exchange. Proposed Rule 7.22 sets forth a process based on the rules of NYSE Arca and NYSE American governing the registration of a Non-DMM Market Maker in a security, and therefore would promote just and equitable principles of trade by specifying requirements that are based on the approved rules of other exchanges. The Exchange further believes that proposed Rule 7.22 would serve investor protection and public interest goals by enumerating the factors that the Exchange may consider in approving a Non-DMM Market Maker's request to register in a security, which take into account the Non-DMM Market Maker's ability to meet its obligations and promote market quality on the Exchange.

The Exchange believes that proposed Rule 7.23, setting forth the obligations and duties of Non-DMM Market Makers, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules governing trading on the Exchange that are consistent with the rules currently in place on NYSE Arca and NYSE American regarding the duties and obligations of Market Makers on those exchanges, which have been previously approved by the Commission. As a result, the proposal promotes uniformity and consistency among affiliated exchanges' rules pertaining to market makers who

are not DMMs or SLPs. For similar reasons, the Exchange believes that proposed Rule 7.23 is also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by establishing regulatory requirements for Non-DMM Market Makers that would enhance the quality of its market and support investor protection and public interest goals. Specifically, proposed Rule 7.23 specifies the obligations of a Non-DMM Market Maker to, among other things, maintain a Two-Sided Obligation and meet certain pricing specifications, thereby promoting additional displayed liquidity and facilitating price discovery on the Exchange. The proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a new opportunity for member organizations to leverage their trading activity and access the benefits and economic incentives available to registered market makers by meeting obligations less stringent than those required of DMMs and SLPs, and in turn enhancing competition on the Exchange for the benefit of all market participants.

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 sets forth rules governing Non-DMM Market Makers on the Exchange and is based on NYSE Arca and NYSE American rules that have been approved by the Commission. The Exchange believes that the proposed rules would promote competition because they would provide for obligations relating to Non-DMM Market Makers that are based on established rules, thereby reducing any potential barriers to entry for market makers registered on other exchanges to be approved as a Non-DMM Market Maker on the Exchange. The Exchange further believes that the proposed rules would not impose any burden on competition that is not necessary or

appropriate because they are designed to provide its members with consistency across affiliated exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms. The Exchange also believes that the proposed rule change would promote competition by providing member organizations that are registered as market makers on other exchanges with the opportunity to similarly register as a Non-DMM Market Maker on the Exchange without being subject to the more stringent quoting or volume requirements associated with being a DMM or SLP. By registering as a Non-DMM Market Maker on the Exchange, such member organizations may be able to deploy their existing market-making strategies on the Exchange and may more easily qualify for credits offered by the Exchange based on the increased quoting and liquidity-providing activity required of them as Non-DMM Market Makers. The Exchange therefore believes that the proposed rule change would promote competition by encouraging additional displayed liquidity, facilitating price discovery, and increasing the range and diversity of market making activity on the Exchange. Finally, the Exchange does not believe that the proposed rules would impose any burden on intra-market competition because adding a new market participant of “Non-DMM Market Maker” would allow all member organizations an opportunity to access the benefits available to registered market makers, subject to the same requirements and obligations as market makers on other exchanges.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2021-08 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-2021-08. 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-2021-08, 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>10</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).