

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80577; File No. SR-NYSEMKT-2017-04)

May 2, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Market Makers Applicable When the Exchange Transitions Trading to Pillar, the Exchange's New Trading Technology Platform

I. Introduction

On January 25, 2017, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar, the Exchange's new trading technology platform. The proposed rule change was published for comment in the Federal Register on February 13, 2017.³ On March 29, 2017, the Commission designated a longer period for action on the proposed rule change.⁴ On March 30, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79982 (Feb. 7, 2017), 82 FR 10508 (Feb. 13, 2017) ("Notice").

⁴ See Securities Exchange Act Release No. 80336 (Mar. 29, 2017), 82 FR 16447 (Apr. 4, 2017).

⁵ In Amendment No. 1, the Exchange: (1) specified that proposed Exchange Rule 7.25E titled "DMM Security Allocation and Reallocation" is also based on New York Stock Exchange LLC ("NYSE") Rule 103B; (2) modified proposed Exchange Rule 7.25E(b)(1), to read "Issuer Section [sic] of DMM Unit by Interview;" (3) modified proposed Exchange Rule 7.25E(b)(1)(B)(ii) by (a) adding the qualifier "eligible" to "DMMs" in the first sentence, (b) adding the clause "or a designee of such senior official" at the end of the second sentence, (c) modifying the fourth sentence to "Representatives of each DMM must participate in the meeting," and (d) adding a final sentence stating that "Meetings will normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere;" (4) modified proposed Exchange

received no comments on the proposal, as modified by Amendment No. 1. The Commission is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to adopt new rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar, a new trading technology platform. As part of this transition, the Exchange would move from the current floor-based market with a parity allocation model to a fully automated market with a price-time-priority allocation model. The Exchange's floor-based traders, such as designated market makers ("DMMs") and floor brokers, would not be retained in Pillar. Electronic DMMs would replace floor-based DMMs.

The proposed rules would not assign securities to DMMs at the natural-person level and would not require DMMs to facilitate the opening, reopening, or closing of assigned Exchange-listed securities. In addition, the proposed rules would not entitle DMMs to a parity allocation of executions, and also would not subject DMMs to heightened capital requirements. Finally, DMMs would continue to be subject to rules governing allocation of securities and combination

Rule 7.25(b)(2) by (a) changing the title to "Exchange Selection of DMM by Delegation," (b) deleting from the first sentence of paragraph (A) the phrase "based on a review of all information available to the issuer," and (c) modifying paragraph (B) to state that "The ESP will select the DMM and inform the issuer of its selection"; (5) modified proposed Exchange Rule 7.25E(b)(11) to state that "If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM for those subsequently listed funds or it may select a different DMM from the group of eligible DMMs that the issuer interviewed or reviewed in the allocation process for its initial fund"; (6) modified proposed Exchange Rule 7.25E(d)(1) to state "loses its registration as a DMM in a security as a result of proceedings under the Rule 8000 or 9000 Series, as applicable; or"; and (7) changed proposed Exchange Rule 7.25E(e) to make listing-company DMM allocation decisions for purposes of an initial public offering sunset after 18 months, made a conforming change to the filing, and stated that this proposed rule is based on current Exchange Rule 103B(VI)(H) – Equities and NYSE Rule 103B(VI)(H). Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysemkt-2017-04/nysemkt201704-1680445-149392.pdf>.

of DMM units. The Exchange would also no longer provide for members to act as Supplemental Liquidity Providers.

The Exchange represents that the proposal is based on the rules of NYSE Arca Equities, Inc. (“NYSE Arca Equities”), which has already implemented Pillar, the same trading technology platform as the Exchange proposes to adopt.⁶

The proposal would set forth new definitions for Market Makers, Market Maker Authorized Traders, and Designated Market Makers. In addition, the proposal would set forth the process for registration and obligations of Market Makers, the obligations of Market Maker Authorized Traders, the registration of non-DMM Market Makers, the registration and obligations of DMMs, DMM security allocation and reallocation, and DMM combination review policy.⁷

The Exchange represents that it will announce the transition to Pillar, if approved by the Commission, by Trader Update. The Exchange anticipates that the transition would occur in the second quarter of 2017. After the transition to Pillar, current Exchange equities rules governing

⁶ NYSE Arca filed four proposals to implement its transition to Pillar in stages: (1) adopting rules for trading sessions, order ranking and display, and order execution; (2) adopting rules for orders and modifiers and the retail liquidity program; (3) adopting rules for trading halts, short sales, limit up-limit down, and odd lots and mixed lots; and (4) adopting rules for auctions. See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR-NYSEArca-2015-38) (first Pillar filing and approval); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR-NYSEArca-2015-56) (second Pillar filing and approval); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (third Pillar filing and approval); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) and 76869 (Jan. 11, 2016), 81 FR 2276 (Jan. 15, 2016) (fourth Pillar filing and approval).

⁷ The Exchange previously adopted these rules, generally with rule text reserved for future filings, in anticipation of the current proposal. See Securities Exchange Act Release No. 79242 (Nov. 4, 2016), 81 FR 79081 (Nov. 10, 2016) (SR-NYSEMKT-2016-97). The rule numbers correspond with the rule numbers of NYSE Arca Equities rules.

the floor-based platform would no longer be applicable. For each current equities rule that would not be applicable when trading on the Pillar platform begins, the Exchange proposes to add a preamble stating that “this rule is not applicable to trading on the Pillar trading platform.” The Exchange represents that, after it has transitioned to the Pillar trading platform, it will file a separate proposed rule change to delete the obsolete rules. Current Exchange rules governing equities trading that do not have the preamble described above will continue to govern Exchange operations on its cash equities trading platform. A detailed description of the proposal appears in the Notice.⁸ The proposal is summarized and discussed below.

A. Definitions

The Exchange proposes three new definitions related to market makers. First, the Exchange proposes to define the term “Market Maker” as an ETP Holder that acts as a Market Maker pursuant to Exchange Rule 7E.⁹ This proposed definition is based on the definition of “Market Maker” in NYSE Arca Equities, without any substantive differences.¹⁰ Second, the Exchange proposes to define “Market Maker Authorized Trader,” or “MMAT,” to mean an Authorized Trader who performs market making activities pursuant to Exchange Rule 7E on behalf of a Market Maker.¹¹ This proposed definition is based on the definition of “Market

⁸ See Notice, supra note 3.

⁹ See Proposed Exchange Rule 1.1E(v). In a related rule filing, the Exchange has proposed to define the term “ETP Holder” as a member organization that has been issued an Equity Trading Permit. See Securities Exchange Act Release No. 79993 (Feb. 9, 2017), 82 FR 10814 (Feb. 15, 2017) (SR-NYSEMKT-2017-01) (“Trading Rules Filing”). The term “member organization” is defined in Exchange Rule 2(b) – Equities.

¹⁰ See NYSE Arca Equities Rule 1.1(v).

¹¹ See Proposed Exchange Rule 1.1E(w). The Exchange has separately proposed to define the term “Authorized Trader” to mean a person who may submit orders to the Exchange’s cash equities Trading Facilities on behalf of his or her ETP Holder. See supra note 9.

Maker Authorized Trader” in NYSE Arca Equities, without any substantive differences.¹² Third, the Exchange proposes to define “Designated Market Maker,” or “DMM,” as a registered Market Maker that is subject to additional requirements set forth in Section 2 of Exchange Rule 7E for Exchange-listed securities assigned to such DMM.¹³ The Exchange represents that this proposed definition would be new and that it is not based on the rules of the NYSE Arca Equities exchange.¹⁴

B. Registration of Market Makers

Proposed Exchange Rule 7.20E addresses registration requirements for Market Makers, such as how an ETP Holder files an application to register, the factors that the Exchange will consider in reviewing the application, effectiveness and appeal provisions, the right of the Exchange to suspend or terminate registration, and withdrawal procedures. The Exchange represents that the proposed rule is based in part on NYSE Arca Equities Rule 7.20, with the following substantive differences. First, the Exchange proposes that member organizations already registered as Market Makers by the Exchange would continue to be registered as Market Makers under proposed Exchange Rule 7.20E without being required to re-register as a Market Maker.¹⁵ Second, the second sentence of proposed Exchange Rule 7.20E(b) would be changed to provide that “[a]pplications will be reviewed by the Exchange, which will consider the ETP

¹² See NYSE Arca Equities Rule 1.1(w).

¹³ See Proposed Exchange Rule 1.1E(ccc).

¹⁴ See Exchange Rule 2(i) – Equities. Furthermore, because DMMs would be Market Makers, and a Market Maker designation is at the level of the ETP Holder, the Exchange represents that the proposed definition would differ from the Exchange’s current rules, which define a DMM at the individual level.

¹⁵ Under current Rule 103 – Equities, a member organization may be approved to be registered as a DMM. In addition, under current Rule 107B – Equities, a member organization approved as a Supplemental Liquidity Provider may be registered as a market maker on the Exchange as an “SLMM”

Holder's capital, operations, personnel, technical resources, and disciplinary history." The Exchange also proposes an additional clarifying sentence that would provide that, after reviewing the application, the Exchange would either approve or disapprove the ETP Holder's registration as a Market Maker. Third, because proposed Exchange Rule 7.24E(a)(4) would cover DMM withdrawal from registration in a security, the Exchange proposes that DMMs would not be covered by the provisions of proposed Rule 7.20E(e), which governs a Market Maker's withdrawal of registration as a Market Maker in a security. The Exchange also proposes to provide that a Market Maker that fails to notify the Exchange of its written notice of withdrawal on the business day prior to its withdrawal may be subject to formal disciplinary action.¹⁶ Finally, the Exchange proposes a non-substantive difference to proposed Rule 7.20E(c) and (e), as compared to NYSE Arca Equities Rule 7.20(c) and (d), to use Exchange disciplinary rule references in lieu of NYSE Arca Equities disciplinary rule references.

C. Obligations of Market Maker Authorized Traders

Proposed Exchange Rule 7.21E would set forth the obligations of Market Maker Authorized Traders. As proposed, MMATs would be permitted to enter orders only for the account of the Market Maker for which the MMATs are registered. The proposed rule would also specify the registration requirements for MMATs and the procedures for suspension and withdrawal of registration. The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.21.

¹⁶ The Exchange states it does not believe that a Market Maker needs to provide ten business day notice of such withdrawal of registration, as required by NYSE Arca Equities Rule 7.20(e), because the Exchange can process such withdrawals within one business day from date of notice.

D. Registration of Non-DMM Market Makers in a Security¹⁷

Proposed Exchange Rule 7.22E would set forth the process for Market Makers, other than DMMs, to become registered in a security and would set forth the factors the Exchange may consider in approving the registration of a non-DMM Market Maker in a security. The proposed rule would also govern both termination of a Market Maker's registration in a security by the Exchange and voluntary termination by a Market Maker.

The Exchange represents that proposed Exchange Rule 7.22E is based on NYSE Arca Equities Rule 7.22 with certain differences. First, proposed Exchange Rule 7.22E would govern registration in a security only for non-DMM Market Makers, rather than for all Market Makers. Second, in proposed Exchange Rule 7.22E(a), the Exchange proposes that a Market Maker may become registered in a security by submitting a request to the Exchange, rather than by filing a security registration form.¹⁸ Third, the Exchange does not propose to include rule text based on paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22.¹⁹ Finally, the Exchange proposes additional, non-substantive differences by replacing references to NYSE Arca Equities Rule 10 and 10.13 with references to the Exchange Rule 9200 and Rule 9500 Series, respectively.

¹⁷ Because proposed Exchange Rules 7.22E and 7.24E would describe the obligations of DMMs on the Pillar trading platform, the Exchange proposes that Exchange Rule 104 – Equities would not be applicable to trading on the Pillar trading platform.

¹⁸ NYSE Arca Equities Rule 7.22 states that a prospective Market Maker should file a security registration form.

¹⁹ Since NYSE Arca Equities rules governing designated market makers and lead market makers are not applicable on the Exchange, the Exchange is not including in proposed Exchange Rule 7.22E the text from paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22. The Exchange proposes that requirements relating to DMMs would be set forth in proposed Exchange Rules 7.24E, 7.25E, and 7.26E, described in greater detail below.

E. Obligations of Market Makers

Proposed Exchange Rule 7.23E would set forth the affirmative obligations of Market Makers, including DMMs, to engage in a course of dealing for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. Further, the proposed rule would set forth specific responsibilities and duties of Market Makers, including the obligation to maintain continuous, two-sided trading in registered securities and to adhere to certain pricing obligations. As proposed, Market Makers would have to remain in good standing with the Exchange, inform the Exchange of any material change in financial or operational condition or in personnel, and clear and settle transactions through the facilities of a registered clearing agency. The proposed rule provides for disciplinary action, suspension, or revocation of registration by the Exchange upon certain failures of Market Makers to abide by the requirements of the rule. Finally, the proposed rule sets forth temporary withdrawal provisions for Market Makers.

The Exchange represents that proposed Exchange Rule 7.23E is based on NYSE Arca Equities Rule 7.23 with certain differences. First, proposed Exchange Rules 7.23E(a)(1)(B)(iii) and (iv) have different definitions for the terms “Designated Percentage” and “Defined Limit.” The Exchange states that it is using the definitions for these terms used in Bats BZX, Inc. Rule 11.8(d)(2)(D) and (E). Second, proposed Exchange Rule 7.23E(a)(2), rather than citing NYSE Arca Equities Rule 4.1, would require that a Market Maker maintain adequate minimum capital in accordance with the provisions of Rule 15c3-1 under the Act (“Rule 15c3-1”). The Exchange represents that this does not represent a substantive change in minimum capital requirements because NYSE Arca Equities Rule 4.1 cross references Rule 15c3-1. Finally, the Exchange proposes that the provisions of proposed Exchange Rule 7.23E(d), regarding temporary

withdrawal of an ETP Holder from Market Maker status in the securities in which it is registered, would not be applicable to Market Makers acting as a DMM. As described in greater detail below, proposed Exchange Rule 7.24E(a)(4) would address DMM withdrawal from registration in a security.

F. Registration and Obligations of DMMs²⁰

Proposed Exchange Rule 7.24E would set forth the registration and obligations of DMMs. The Exchange represents that proposed Exchange Rule 7.24E is new and is based in part on provisions of current Exchange Rule 98A – Equities, Exchange Rule 103 – Equities, Exchange Rule 104 – Equities, and Exchange Rule 107B – Equities.

Proposed Exchange Rule 7.24E(a) would provide that all Exchange-listed securities would be assigned to a DMM and there would be no more than one DMM per Exchange-listed security.²¹ The Exchange represents that this new rule text is based on how the Exchange currently operates, as set forth in Exchange Rules 103 – Equities and 103B – Equities, in that every Exchange-listed security is allocated to a DMM.

Proposed Exchange Rule 7.24E(b) would set forth the registration procedures of DMMs.²² An ETP Holder must be registered as a Market Maker and approved as a DMM, in order to be eligible to receive an allocation as a DMM. The Exchange represents this proposed rule is based in part on current Exchange Rule 103(a)(i) – Equities.²³ To provide for continuity

²⁰ Because proposed Exchange Rules 7.22E and 7.24E would describe the obligations of DMMs on the Pillar trading platform, the Exchange proposes that Exchange Rule 104 – Equities would not be applicable to trading on Pillar.

²¹ See Proposed Exchange Rule 7.24E(a).

²² See Proposed Exchange Rule 7.24E(b).

²³ The Exchange proposes that Exchange Rule 103 – Equities would not be applicable to trading on the Pillar trading platform. Instead, proposed Exchange Rule 7.24(b), together

for companies that list their securities on the Exchange, the Exchange proposes in Rule 7.24E(b)(1) to allow a DMM unit currently approved to operate one business day prior to the Pillar transition to automatically be approved as a DMM. Conversely, Market Makers not registered as a DMM one business day before the Pillar transition date would need to file a written application to become a DMM.

The Exchange proposes a substantive difference between proposed Exchange Rule 7.24E(b)(2) and existing Exchange Rule 103(b)(i) – Equities in that proposed Exchange Rule 7.24E(b)(2) would reference proposed Exchange Rules 7.25E(f) and 7.26E, which establish additional factors that the Exchange may consider in determining whether to approve a Market Maker as a DMM. Proposed Exchange Rules 7.25E (“DMM Security Allocation and Reallocation”) and 7.26E (“DMM Combination Policy”) are described below.

Proposed Exchange Rule 7.24E(b)(3) would provide that an ETP Holder registered as a DMM in a security may also be registered as a Market Maker in that security only if the ETP Holder maintains information barriers between the trading unit operating as a DMM and the trading unit operation as a non-DMM Market Maker in the same security. Currently, under Exchange Rule 107B(h)(2)(A) – Equities, an Exchange member may operate as a supplemental liquidity provider in a security that is assigned to a DMM unit of the member, provided that the supplemental liquidity provider is not part of the DMM unit.²⁴ The Exchange represents that Rule 7.24E(b)(3) would operate substantially similarly to the current rule in that a member organization can currently be both a DMM and a supplemental liquidity provider in a security through the use of information barriers.

with proposed Exchange Rule 7.20E, described above, would establish the registration requirements for DMMs.

²⁴ See Exchange Rule 107B(h)(2)(A) – Equities.

Proposed Exchange Rule 7.24E(b)(4) would govern the circumstances under which a DMM may temporarily withdraw from its DMM status in its assigned securities. The Exchange represents that this rule is based on NYSE Arca Equities Rule 7.23(d). In addition, Proposed Rule 7.24E(b)(5) would specify that a DMM may not be registered in a security of an issuer, or a partner or subsidiary of the issuer, if the entity is an approved person or affiliate of the DMM. The Exchange represents that the proposed rule text is based on current Exchange Rule 98A – Equities, with non-substantive differences to use Pillar terminology.

Proposed Exchange Rule 7.24E(c) sets forth the obligations of DMMs. The Exchange represents that the text of proposed Exchange Rule 7.24E(c) is based in part on current Exchange Rule 104(a)(1)(A) – Equities. Currently, DMMs are required to maintain a quote at the inside at least 10% of the trading day for securities with a consolidated average daily volume of less than one million shares and at least 5% of the trading day for securities with a consolidated average daily volume equal to or greater than one million shares. The Exchange represents that, similar to the current quoting requirements, the proposed quoting requirement set forth in proposed Exchange Rule 7.24E(c) are portfolio-based quoting requirements. On the Pillar trading platform, because DMMs would not have other obligations as set forth in Exchange Rule 104(a) – Equities, such as the requirement to facilitate openings, reopenings, and closings, the Exchange proposes a heightened quoting obligation of 25% across all securities assigned to a DMM, regardless of consolidated average daily trading volume for a security. The Exchange otherwise proposes that the manner that a DMM's quoting obligations would be calculated would be the same as under current rules.

G. DMM Security Allocation and Reallocation

Proposed Exchange Rule 7.25E would set forth the allocation and reallocation of securities to DMMs. The proposed rule would set forth when a security is eligible for allocation or reallocation, as well as the eligibility of DMMs to participate in the allocation process. The proposed rule further sets forth the allocation process—whether the issuer selects the DMM directly or the issuer delegates the selection to the Exchange. In the event that a company with listed securities wishes to change its DMM, the proposed rule sets forth the reallocation process. Should a DMM lose its registration or voluntarily withdraw its registration, the DMM would be ineligible, under the Exchange’s “Allocation Freeze Policy,” for future allocations for a six-month period. For companies that list securities through an initial public offering, the allocation decision would remain in effect for 12 months. Finally, the proposed rule sets forth criteria the Exchange may consider for applicants that are not currently DMMs. For applicants that are not currently DMMs, the proposal would not require additional capital requirements as currently required.

The Exchange represents that proposed Exchange Rule 7.25E is based on current Exchange Rule 103B – Equities and on NYSE Rule 103B, with substantive differences to reflect that an allocation would be to a DMM at the ETP Holder level rather than at the individual (natural person) DMM level, as well as non-substantive differences to streamline the rule text. In addition, the Exchange would use the term “DMM,” as defined in proposed Exchange Rule 1.1E(ccc) to replace current references to either DMM (as an individual) or DMM unit.²⁵

²⁵ Because proposed Exchange Rule 7.25E would establish the requirements for the allocation and reallocation of securities to DMMs on Pillar, the Exchange proposes that Exchange Rule 103B – Equities would not be applicable to trading on the Pillar trading platform.

H. DMM Combination Policy

For a DMM to merge with another DMM, or otherwise combine their businesses, the transaction must be approved by the Exchange. Proposed Exchange Rule 7.26E would set forth the required contents of a written submission to the Exchange by proponents of the DMM combination addressing certain enumerated factors for the Exchange to consider in approving the transaction, as well as the procedures the Exchange would follow in approving or disapproving a combination. The proposal also sets forth the timeline for the Exchange to approve or disapprove a combination, the ability of the Exchange to grant conditional approvals, and the ability to have the Exchange's board of directors to review a disapproval decision. The Exchange represents that the proposed Exchange Rule is based on current Exchange Rule 123E – Equities (“DMM Combination Review Policy”).²⁶

I. Current Exchange Rules Not Applicable on Pillar

As noted earlier, the Exchange would no longer operate a trading floor once the Exchange transitions to Pillar. As a result, the Exchange proposes that certain current rules that relate to floor-based trading would not be applicable on Pillar.²⁷

²⁶ Because this rule would govern DMM combinations on the Exchange, the Exchange proposes that Rule 123E – Equities would not be applicable to trading on the Pillar trading platform.

²⁷ The Exchange proposes to specify in its rule book that the following Floor-specific rules would not be applicable to trading on Pillar: Exchange Rule 98 – Equities (Operation of a DMM Unit), Exchange Rule 104A – Equities (DMMs – General), Exchange Rule 104B – Equities (DMM Commissions),²⁷ Exchange Rule 113 – Equities (DMM Unit's Public Customers), and Exchange Rule 460 – Equities (DMMs Participating in Contests). In addition, the Exchange proposes to delete current Exchange Rules 99 – Equities, Exchange Rule 100 – Equities, and Exchange Rule 101 – Equities, all of which are currently marked “Reserved,” as well as Exchange Rule 113 Former – Equities (DMMs' Public Customers), which is obsolete. The Exchange represents that DMMs would not be required to facilitate the opening, reopening, or closing of assigned securities; would have electronic access only; would not be entitled to parity allocation; and would not be subject to heightened capital requirements. Current Exchange Rule 460 – Equities

III. Discussion and Commission's Findings

After careful review of the proposal, as modified by Amendment No. 1, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.²⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁹ 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, 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 systems and, in general, to protect investors and the public interest, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange is transitioning from its current floor-based trading, with a parity allocation model, to a fully automated electronic trading system, with a price-time allocation model. The Commission notes that the proposed rules closely parallel, and are substantially similar to, current rules of the Exchange, the NYSE Arca Equities, or the Bats BZX exchange, which were filed and approved by the Commission (or which became immediately effective)

prohibits DMM firms and associated persons from participating in a proxy contest or serving as a director of an issuer, requires DMMs to report beneficial ownership above a certain limit, and limits specified DMM business transactions, if the DMM member is registered in the securities of the issuer. The Exchange represents that DMMs would no longer have a time and place advantage, that DMMs would be similar to market makers on NYSE Arca, and that no other exchanges have restrictions similar to Exchange Rule 460 – Equities. See Email from Clare Saperstein, Associate General Counsel, NYSE Group, Inc. to Michael E. Coe, Assistant Director, and Steve Kuan, Division of Trading and Markets, Commission (Apr. 27, 2017).

²⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(5).

pursuant to Section 19(b) of the Act. NYSE Arca Equities currently operates using the Pillar trading platform, and NYSE Arca Equities market makers operate according to rules that are similar to the rules that the Exchange proposes to adopt. In addition, the Commission believes that the heightened DMM quoting obligations proposed in Exchange Rule 7.24E(c), and the lack of heightened capital requirements, are appropriate because DMMs on the Exchange would not, on the Pillar trading platform, retain their current obligations to facilitate openings, reopenings, and closings on the Exchange. Accordingly, the Commission believes that the proposal is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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-NYSEMKT-2017-04 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-NYSEMKT-2017-04. 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; 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-NYSEMKT-2017-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

As noted above, in Amendment No. 1, the Exchange: (1) specified that proposed Exchange Rule 7.25E, titled "DMM Security Allocation and Reallocation," is based on NYSE Rule 103B; (2) modified proposed Exchange Rule 7.25E(b)(1), to read "Issuer Section [sic] of DMM Unit by Interview;" (3) modified proposed Exchange Rule 7.25E(b)(1)(B)(ii) by (a) adding the qualifier "eligible" to "DMMs" in the first sentence, (b) adding the clause "or a designee of such senior official" at the end of the second sentence, (c) modifying the fourth sentence to "Representatives of each DMM must participate in the meeting," and (d) adding a final sentence stating that "Meetings will normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere;" (4) modified proposed Exchange Rule 7.25(b)(2) by (a) changing the title to "Exchange Selection of DMM by Delegation," (b) deleting from the

first sentence of paragraph (A) the phrase “based on a review of all information available to the issuer,” and (c) modifying paragraph (B) to state that “The ESP will select the DMM and inform the issuer of its selection;” (5) modified proposed Exchange Rule 7.25E(b)(11) to state that “If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM for those subsequently listed funds or it may select a different DMM from the group of eligible DMMs that the issuer interviewed or reviewed in the allocation process for its initial fund;” (6) modified proposed Exchange Rule 7.25E(d)(1) to state “loses its registration as a DMM in a security as a result of proceedings under the Exchange Rule 8000 or 9000 Series, as applicable; or”; and (7) changed proposed Exchange Rule 7.25E(e) to make listing company DMM allocation decisions for purposes of an initial public offering sunset after 18 months, made a conforming change to the filing, and stated that this proposed rule is based on current Exchange Rule 103B(VI)(H)—Equities and NYSE Rule 103B(VI)(H).

The Commission believes that Amendment No. 1 is consistent with the Act and notes that the amendment updates proposed Exchange Rule 7.25E to conform to an amended version of NYSE Rule 103B that became effective in February 2017.³⁰ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³¹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

³⁰ See Securities Exchange Act Release No. 80122 (Feb. 28, 2017), 82 FR 12642 (Mar. 6, 2017) (SR-NYSE-2017-06).

³¹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, that pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEMKT-2017-04), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).