SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75578; File No. SR–NYSE–2015–26]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Order Granting Approval of a Proposed Rule Change Making Permanent the Rules of the NYSE New Market Model Pilot and the NYSE Supplemental Liquidity Providers Pilot

July 31, 2015.

I. Introduction.

On June 4, 2015, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the rules of the Exchange's New Market Model (''NMM'') Pilot (''NMM Pilot'') and the Supplemental Liquidity Providers (''SLP'') Pilot (''SLP Pilot,'' and together with the NMM Pilot, the ''Pilots''). The proposed rule change was published in the **Federal Register** on June 17, 2015.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

A. Background of the Proposal

In October 2008, the Exchange implemented the NMM, under which the Exchange's market currently operates. Historically, NYSE specialists were responsible for overseeing the execution of all orders coming into the Exchange, for conducting auctions on the NYSE Floor (the ''Floor''), and for maintaining an orderly market in all assigned securities.[4] Price discovery on the Exchange took place almost exclusively on the Floor in the form of face-to-face interactions among NYSE Floor brokers (''Floor brokers'') and specialists.[5] In 2006, the Exchange began operating under the NYSE HYBRID MARKET, under which Exchange systems assumed the function of matching and executing electronically entered orders and the Exchange programmed its systems to provide its specialists with an order-by-order advance ''look'' at incoming orders.[6] By 2008, however, the increase in electronic executions on the Exchange, as well as the increase in the use of smart order-routing engines by market participants, had reduced the advantages once enjoyed by Floor brokers and specialists.[7] According to the Exchange at the time, informational advantages had shifted from Floor brokers and specialists to market participants trading electronically ''upstairs.'' [8]

In response to the increased prevalence of electronic trading and the aforementioned shift in informational advantages among the Exchange's market participants, the Exchange proposed the NMM.[9] Among other things, the NMM: (1) Eliminated the function of the Exchange's specialists and created a new category of market participant, Designated Market Makers (''DMMs'') under NYSE Rule 104; (2) implemented the DMM Capital Commitment Schedule (''CCS'') under NYSE Rule 1000; (3) and modified the Exchange's priority rules under NYSE Rule 72.[10] In a subsequent filing and in connection with the NMM Pilot,[11] the Exchange created an additional category of market participant, SLPs, under NYSE Rule 107B. The NMM Pilot was originally scheduled to end on October 1, 2009,[12] and the SLP Pilot was originally scheduled to be a six-month pilot program.[13] The Exchange filed to extend the operation of the Pilots on several occasions, most recently to extend the Pilot periods to July 31, 2015.[14] In this proposal, the Exchange seeks to make the Pilots permanent.

B. Description of the Exchange Rules Subject to the Pilots

1. *NYSE Rule 72*

The Exchange's rules governing the priority of bids and offers, and the allocation of executions, are set forth in NYSE Rule 72. Under NYSE Rule 72(a), when a bid or offer, including pegging interest,[15] is established as the only displayable [16] bid or offer made at a particular price, and that bid or offer is the only displayable interest when its price is or becomes the Exchange Best Bid or Offer (''BBO''), that bid or offer is designated as the ''setting interest'' and is entitled to priority for allocation of executions at that price, as described in NYSE Rule 72 and subject to certain provisions set forth in NYSE Rule 72(a)(ii).

NYSE Rule 72(b) sets forth the provisions governing how setting interest retains its priority. Specifically, once priority is established by setting interest, that setting interest retains its priority for any execution at its price when that price is at the Exchange BBO. If executions decrement the setting interest to an odd-lot size,[17] the remaining portion of the setting interest retains its priority. For any execution of setting interest that occurs when the price of the setting interest is not the Exchange BBO, the setting interest does not have priority and is executed on ''parity,'' as described below.[18]

NYSE Rule 72(c) sets forth the Exchange's rules for the allocation of executions. An automatically executing order will trade first with displayable bids or offers and, if there is insufficient displayable volume to fill the order, will trade next with non-displayable interest. Displayable interest will trade on parity with other displayable interest, and non-displayable interest will trade on parity with other non-displayable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75153 (June 11, 2015), 80 FR 3417 (''Notice'').

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379, 64739 (October 29, 2008) (SR–NYSE–2008–46) (''NMM Approval Order'').

[5] *See id.*

[6] *See id.*

[7] *See id.*

[8] *See id* at 64379–80.

[9] *See id.*

[10] *See id.* at 64380–87.

[11] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (''SLP Notice'').

[12] *See* NMM Approval Order, *supra* note 4, 73 FR at 64389.

[13] *See* SLP Notice, *supra* note 11, 73 FR at 6904.

[14] *See* Securities Exchange Act Nos. 73919 (December 23, 2014), 79 FR 78930 (December 31, 2014) (SR–NYSE–2014–71) (citing prior filings to extend the NMM Pilot and extending the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or July 31, 2015) and 73945 (December 24, 2014), 80 FR 58 (January 2, 2015) (SR–NYSE–2014–72) (citing prior filings to extend the SLP Pilot and extending the SLP Pilot until the earlier of Commission approval to make the SLP Pilot permanent or July 31, 2015).

[15] *See* NYSE Rule 13(f)(3). In 2012, the Exchange amended Rule 72(a) to specify that pegging interest may be a setting interest. *See* Securities Exchange Act Release No. 68302 (November 27, 2012), 77 FR 71658 (December 3, 2012) (SR–NYSE–2012–65).

[16] As used in NYSE Rule 72, the term ''displayable'' means that portion of interest that could be published as, or as part of, the Exchange BBO, including pegging interest. Displayable odd-lot orders are published as part of the Exchange BBO if, when aggregated with other interest available for execution at that price point, the sum of the odd-lot order and other interest available at that price point would be equal to or greater than a round lot. The term ''displayed interest'' includes that part of an order that is published as, or as part of, the Exchange BBO, which may include one or more odd-lot orders. *See* NYSE Rule 72(a)(i).

[17] NYSE Rule 72(a)(ii)(A) precludes odd lot orders from qualifying as a setting interest.

[18] *See infra,* notes 20–21 and accompanying text. Furthermore, priority of setting interest is not retained after the close of trading on the Exchange or following the resumption of trading in a security after a trading halt has been invoked pursuant to NYSE Rule 123D or NYSE Rule 80B. Priority of the setting interest is not retained on any portion of the priority interest that is routed to an away market and is returned unexecuted unless the priority interest is greater than a round lot and the only other interest at the price point is odd-lot orders, the sum of which is less than a round lot. *See* NYSE Rule 72(b)(iii).

interest.[19] For the purpose of share allocation among market participants in an execution, (1) the DMM in a security counts as one ''participant,'' (2) each NYSE Floor broker counts as a participant, and (3) orders represented in Exchange systems, including those of SLPs, collectively constitute a single participant (referred to as the ''Book Participant''). The orders represented in the Book Participant are allocated shares among themselves by time priority with respect to entry.

In any execution at the Exchange BBO, a participant who has established priority as the setting interest receives 15% of the volume of the executed amount or a minimum of one round lot, whichever is greater, until the setting interest has received a complete execution of its eligible priority interest. Setting interest that is decremented to an odd-lot size receives 15% of the volume of the incoming interest rounded up to the size of the setting interest, or the size of the incoming interest, whichever is less. Following the allocation of an execution to setting interest as provided above, the remainder of the executed volume is allocated to each participant on parity. In general, parity provides all market participants the ability to receive executions on an equal basis with other interest available at that price.[20] The participant with the setting interest is also included in the parity allocation.

If there is no setting interest for an execution at the Exchange BBO, allocation of the executed volume is on parity by participant, except as otherwise set forth in NYSE Rule 72. When an execution occurs at the Exchange BBO, interest that is displayed in the Exchange BBO is allocated before any interest that is not displayed. In allocating an execution that involves setting interest, whether the execution takes place at the Exchange BBO or otherwise, the volume allocated to the setting interest is allocated to the interest in the setting interest that is entitled to priority first.

Shares are allocated among participants in round lots or the size of the order if less than a round lot. If the number of shares to be executed at a price point is insufficient to allocate round lots to all the participants eligible to receive an execution at that price point, or the size of the order is less than a round lot, Exchange systems create an allocation wheel of the eligible participants at that price point, and the available round-lot shares are distributed to the participants in turn. If an odd-lot-sized portion of the incoming order remains after allocating all eligible round lots, the remaining shares are allocated to the next eligible participant.

On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first in time. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels its interest and then rejoins, that participant joins as the last position on the wheel at that time. If an odd-lot allocation completely fills the interest of a participant, the wheel moves to the next participant. The allocation wheel also moves to the next participant when Exchange systems execute remaining displayable odd-lot interest prior to replenishing the displayable quantity of a participant.[21]

When an execution occurs outside the Exchange BBO, the interest that is displayable is allocated before any interest that is non-displayable. All interest that is displayable is on parity with other individual participants' displayable interest. Similarly, all interest that is non-displayable is on parity with other individual participants' non-displayable interest. Incoming orders eligible for execution at price points between the Exchange BBO trade with all available interest at the price of the execution in between the Exchange BBO. All NYSE interest available to participate in the execution (*e.g.,* d-quotes, s-quotes, Reserve Orders, Mid-Point Passive Liquidity (''MPL'') Orders, and CCS interest) will trade on parity with other such interest.[22]

DMM interest added intra day to participate in a verbal transaction with a Floor broker or during a slow quote is allocated shares only after all other interest eligible for execution at the price point is executed in full. DMM interest added at the time of the slow quote, or when verbally trading with a Floor broker, that is not executed during the transaction will be cancelled.[23] However, s-Quotes, if any, representing DMM interest present at the price point prior to the verbal transaction with a Floor broker or during a slow quote receive an allocation on parity as described above. An order that is modified to reduce the size of the order retains the time stamp of original order entry. An order modified in any other way, such as increasing the size or changing the price of the order, receives a new time stamp.

Under NYSE Rule 72(d), when a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are ''block'' orders (*i.e.,* orders of at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less)[24]—and are not for the account of the member or member organization, an account of an associated person, or an account with respect to which the member, member organization, or associated person thereof exercises investment discretion—then the member may ''cross'' those orders at a price at or within the Exchange BBO.[25] The member's bid or offer shall be entitled to priority at the cross price, irrespective of pre-existing displayed bids or offers

[19] After the Exchange filed this proposal and it was noticed for public comment, the Commission approved a separate proposed rule change under which the Exchange amended its rules governing order types and modifiers. *See* Securities Exchange Act Release No. 75444 (July 13, 2015), 80 FR 42575 (July 17, 2015) (SR–NYSE–2015–15) (''NYSE Order Type Approval Order''). In the NYSE Order Type Approval Order, the Commission approved amendments to NYSE Rule 72(c)(i) that: (1) Replaced the term ''reserve interest'' with the term ''non-displayable interest'' so that the rule now provides that all non-displayable interest, which includes certain types of reserve interest and Mid-Point Passive Liquidity (''MPL'') Orders, trades on parity in accordance with the order allocation provisions of NYSE Rule 72; and (2) changed the phrase ''the displayed bid (offer)'' to ''displayable bids (offers)'' and changed the phrase ''displayed volume'' to ''displayable volume'' to specify that an automatically executing order will trade first with displayable bids (offers) and, if there is insufficient displayable volume to fill the order, will trade next with non-displayable interest. *See* NYSE Order Type Approval Order, 80 FR at 42577.

[20] *See* NMM Approval Order, *supra* note 4, 73 FR at 64384. In NYSE Rule 72(c)(iv) and (viii), the Exchange provides examples of how orders are executed on parity.

[21] NYSE Rule 72(c)(viii) provides examples of how the Exchange's allocation wheel sets execution priority.

[22] In the NYSE Order Type Approval Order, the Commission approved a change to NYSE Rule 72(c)(x) that added MPL Orders to the list of orders identified as being eligible to trade at price points between the Exchange BBO. *See* NYSE Order Type Approval Order, *supra* note 19, 80 FR at 42577.

[23] When the Exchange adopted the NMM Pilot in 2008, all DMM interest was allocated on parity. In 2009, the Exchange amended NYSE Rule 72 to eliminate parity allocations for DMM interest added intra day during a slow quote or when verbally trading with Floor brokers at the point of sale. *See* Securities Exchange Act Release No. 60287 (July 10, 2009), 74 FR 34817 (July 17, 2009) (SR–NYSE–2009–69).

[24] *See* NYSE Rule 72.10.

[25] In 2011, the Exchange amended NYSE Rule 72(d) regarding agency cross transactions and added NYSE Rule 72.10 to: (1) Change the minimum size of a block order under the rule from 25,000 shares or more to 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less; and (2) conform NYSE Rule 72(d) to NYSE Rule 90 to permit a Floor broker to represent an NYSE Rule 72(d) crossing transaction on behalf of an unaffiliated member or member organization. *See* Securities Exchange Act Release No. 64334 (April 25, 2011), 76 FR 24078 (April 29, 2011) (SR–NYSE–2011–18).

on the Exchange at that price. NYSE Rule 72(d) also sets forth the rules and procedures for executing these types of transactions.

2. NYSE Rule 104

NYSE Rule 104 sets forth the obligations of DMMs. Under NYSE Rule 104(a), DMMs registered in one or more securities traded on the Exchange are required to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. NYSE Rule 104(a) also enumerates specific responsibilities and duties of a DMM, including: (1) A continuous two-sided quoting requirement, which mandates that each DMM maintain a bid or an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO,'' together the ''NBBO'') for a certain percentage of the trading day [26] and (2) the facilitation of openings, re-openings, the Exchange's Midday Auction, and the close of trading for the DMM's assigned securities, all of which may include supplying liquidity as needed.[27] NYSE Rule 104(e) further provides that DMM units must provide contra-side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening, and closing transactions but that remain unpaired after the DMM has paired all other eligible round lot sized interest.

NYSE Rule 104(b) permits DMM units to use algorithms for quoting and trading, sets forth the provisions governing how a DMM unit's systems may employ algorithms, and lists the order types that a DMM unit may not enter.[28] Furthermore, under NYSE Rule 104(d), a DMM unit may provide algorithmically generated price improvement to all or part of an incoming order that can be executed at or within the Exchanges BBO through the use of CCS interest under Rule 1000.[29]

Under NYSE Rule 104(c), a DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders,[30] and such reserve interest is eligible for execution in manual transactions.

NYSE Rule 104(f) sets forth the functions of DMMs, such as: (1) Mandating that a DMM maintain, insofar as reasonably practicable, a fair and orderly market on the Exchange in the stocks in which he or she is so acting and (2) stating that DMMs are designated as market makers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

NYSE Rule 104(g) governs transactions by DMMs. NYSE Rule 104(g) states 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. NYSE Rule 104(g) describes certain permitted transactions, including neutral transactions and Non-Conditional Transactions, as defined therein. NYSE Rule 104(g)(A)(III) provides that, except as otherwise permitted by NYSE Rule 104, during the last ten minutes prior to the close of trading, a DMM with a long or short position in a security is prohibited from making a purchase or sale, respectively, in such security that results in a new high or low price, respectively, on the Exchange for the day at the time of the DMM's transaction. Furthermore, NYSE Rule 104(h) addresses DMM transactions in securities that establish or increase the DMM's position. NYSE Rule 104(h)(ii) permits certain ''Conditional Transactions'' [31] without restriction as to price if they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction.[32] However, NYSE Rule 104(h)(iv) permits certain other Conditional Transactions without restriction as to price, and NYSE Rule 104(i) provides that re-entry obligations following such Conditional Transactions would be the same as the re-entry obligations for Non-Conditional Transactions pursuant to NYSE Rule 104(g).

NYSE Rule 104(j), which was added in 2013,[33] permits a DMM to perform the following Trading Floor functions:

- Maintain order among Floor brokers manually trading at the DMM's assigned panel;
- bring Floor brokers together to facilitate trading, which may include the DMM as a buyer or seller;
- assist a Floor broker with respect to an order by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and canceling or inputting Floor broker agency interest on behalf of a Floor broker; and
- research the status of orders or questioned trades on his or her own initiative or at the request of the Exchange or a Floor broker when a Floor broker's handheld device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.[34]

Finally, NYSE Rule 104(k) provides that in the event of an emergency, such as the absence of the DMM, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the DMMs without assistance, an NYSE Floor Governor may authorize a member of the Exchange, who is not registered as a DMM in such stock, to act as temporary DMM for that day only.

[26] *See* NYSE Rule 104(a)(1). NYSE Rule 104(a)(1) requires the DMM to maintain a bid or offer at the NBB and NBO at least 15% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume (''CADV'') of less than one million shares, and at least 10% of the trading day for securities in which the DMM unit is registered with a CADV equal to or greater than one million shares.

[27] *See* NYSE Rule 104(a)(2)–(3). In 2015, the Exchange implemented its Trading Collar price protection under Rule 1000(c) and simultaneously eliminated liquidity replenishment points (''LRP'') and the ''gap'' quote procedures. *See* Securities Exchange Act Release No. 74063 (January 15, 2015), 80 FR 3269 (January 22, 2015) (SR–NYSE–2015–01). The Exchange also amended NYSE Rule 104(a) to eliminate a DMM's obligations to facilitate trading when an LRP was reached or the gap quote procedure was being used. *See id.*

[28] In the NYSE Order Type Approval Order, the Commission approved the following changes to NYSE Rule 104(b): (1) The addition of text stating that the Exchange systems will prevent incoming DMM interest from trading with resting DMM interest; and (2) the addition of text specifying the order types and modifiers that a DMM unit may not enter, such as Market Orders, as defined under NYSE Rule 13. *See* NYSE Order Type Approval Order, *supra* note 19, 80 FR 42577–78.

[29] *See infra* Section II.B.3 for a discussion of a DMM's CCS interest.

[30] *See* NYSE Rule 13(d)(2). Reserve interest is the portion of a Reserve Order that is not displayed. *See* NYSE Rule 13(d)(2)(C).

[31] Under NYSE Rule 104(h)(i), a Conditional Transaction is a DMM's transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer.

[32] NYSE Rule 104(h)(iii) sets forth the Exchange's re-entry obligations for Conditional Transactions.

[33] *See* Securities Exchange Act Release No. 71175 (December 23, 2013), 78 FR 79534 (December 30, 2013) (SR–NYSE–2013–21).

[34] NYSE Rule 104(j)(ii) permits the Exchange to make systems available to a DMM at the post displaying the following information about securities in which the DMM is registered: (1) Aggregated buying and selling interest; (2) the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display excludes any order or portion thereof that a market participant has elected not to display to a DMM; and (3) post-trade information. A DMM may not use any such information in a manner that would violate Exchange rules or federal securities laws or regulations. Under NYSE Rule 104(j)(iii), a DMM may provide market information that is available to the DMM at the post to (1) respond to an inquiry from a Floor broker in the normal course of business or (2) visitors to the Trading Floor for the purpose of demonstrating methods of trading. However, a Floor broker may not submit an inquiry pursuant to NYSE Rule 104(j)(iii) by electronic means and the DMM may not use electronic means to transmit market information to a Floor broker in response to a Floor broker's inquiry pursuant to NYSE Rule 104(j)(iii).

In addition to making the current provisions of NYSE Rule 104 permanent, the Exchange also proposes to: (1) Replace the reference to ''NYSE Regulation's Division of Market Surveillance'' in Rule 104(k) with a reference to ''the Exchange'' because, pursuant to NYSE Rule 0, Exchange Rules that refer to NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Regulation staff or departments, Exchange staff, and Exchange departments should be understood as also referring to the Financial Industry Regulatory Authority (''FINRA'') staff and FINRA departments acting on behalf of the Exchange pursuant to the regulatory services agreement between the Exchange and FINRA, as applicable; (2) delete the Supplementary Material to NYSE Rule 104—NYSE Rule 104.05—because NYSE Rule 104.05 states that its provisions apply ''until no later than October 31, 2009;'' and (3) delete NYSE Rule 104T, which, by its express terms, sets forth the rule for dealings by DMMs until no later than ten weeks after the Commission issued the NMM Approval Order.[35]

3. The DMM Capital Commitment Schedule

The provisions of NYSE Rule 1000 relating to the CCS, and which are operating as part of the NMM Pilot, are set forth in NYSE Rules 1000(d)—1000(g). In general, the CCS allows a DMM to create a schedule of additional non-displayed liquidity at various price points at which the DMM is willing to interact with other trading interest (*i.e.,* outside, at, and inside the Exchange BBO) and provide price improvement to orders in the Exchange's systems. CCS interest is separate and distinct from other DMM interest and the Exchange characterizes CCS interest as ''generally interest of last resort.'' [36]

Under NYSE Rule 1000(d), a DMM unit may, for each security in which it is registered, place within Exchange systems a pool of liquidity—the CCS—to be available to fill or partially fill [37] incoming orders in automatic executions.[38] NYSE Rule 1000(d) also provides that CCS interest is used to trade at the Exchange BBO, at prices better than the Exchange BBO, and at prices outside the Exchange BBO. CCS interest must be for a minimum of one round lot of a security and entered at price points that are at, inside, or away from the Exchange BBO. NYSE Rule 1000(e) governs executions at and outside the Exchange BBO and specifies how CCS interest would interact with such executions.

NYSE Rule 1000(f) specifies how CCS interest may provide price improvement inside the Exchange BBO with interest arriving in the Exchange market that: (1) Will be eligible to trade at or through the Exchange BBO; (2) will be eligible to trade at the price of interest in Exchange systems representing non-displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest (''hidden interest'') or MPL Orders; or (3) will be eligible to route to away market interest for execution, if the total volume of CCS interest, plus d-Quote interest in Floor broker agency interest files, plus any interest represented by hidden interest, would be sufficient to fully complete the arriving interest at a price inside the Exchange BBO. In such an instance, the Exchange systems determine the price point inside the BBO at which the maximum volume of CCS interest will trade, taking into account the volume, if any, available from Floor broker d-Quotes and hidden interest. The arriving interest is executed at that price, with all interest trading on parity.

Under NYSE Rule 1000(g), CCS interest may trade with non-marketable [39] interest if the non-marketable interest betters the Exchange BBO (or cancels in the case of an arriving IOC order) and if the incoming interest may be executed in full by all available trading interest on the Exchange, including CCS interest and d-quotes. Such a trade would take place at the limit price of the arriving non-marketable interest. All interest trading with the incoming interest trades on parity.

4. NYSE Rule 107B

NYSE Rule 107B sets forth the rules governing SLPs. Under NYSE Rule 107B(a), an SLP is defined as a member organization that electronically enters proprietary orders or quotes from off the Floor into the systems and facilities of the Exchange and is obligated: (1) To maintain a bid or an offer at the NBB or NBO in each assigned security in round lots for at least 10% of the trading day, on average, and for all assigned SLP securities; [40] and (2) to add liquidity of an average daily volume (''ADV'') of more than a specified percentage of CADV in all NYSE-listed securities, as set forth in the Exchange's Price List, on a monthly basis.[41] An SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM'').[42]

Under NYSE Rule 107B(b), when an SLP posts liquidity on the Exchange and that liquidity is executed against an inbound order, the SLP receives a financial rebate for the executed transaction as set forth in the Exchange's Price List, subject to the non-regulatory penalty provision described in NYSE Rule 107B(k).[43] The SLP receives credit toward the financial rebate for executions of displayed and

[35] Additionally, in NYSE Rules 104 and 1000, the Exchange proposes to replace all references to the term ''Display Book'' with references either to the term (1) ''Exchange systems'' when use of the term refers to the Exchange systems that receive and execute orders, or (2) ''Exchange book'' when use of the term refers to the interest that has been entered and ranked in Exchange systems. The Exchange represents that it has retired the actual system referred to as the ''Display Book,'' but not the functionality associated with the Display Book. *See* Notice, *supra* note 3, 80 FR 34717 n.9.

[36] *See* Notice, *supra* note 3, 80 FR at 34718.

[37] The original NMM Pilot permitted CCS to participate only if it would fill an incoming order. In 2009, the Exchange amended Rule 1000 to provide that Exchange systems would access CCS interest to participate in executions when the incoming order would only be partially executed. *See* Securities Exchange Act Release No. 60671 (September 15, 2009), 74 FR 48327 (September 22, 2009) (SR–NYSE–2009–71).

[38] CCS interest supplements displayed and non-displayed interest of the DMM in Exchange systems.

[39] Under NYSE Rule 1000(g)(1), ''non-marketable'' means trading interest (*i.e.,* displayable and non-displayable) that is at a price higher than the current Exchange bid (but below the current Exchange offer) or lower than the current Exchange offer (but above the current Exchange bid), including better bids and offers on other market centers. *See* NYSE Rule 1000(g)(1).

[40] The SLP Pilot originally required an SLP to maintain a bid or offer at the NBB or NBO in each assigned security averaging at least 5% of the trading day. Effective September 25, 2010, the Exchange increased this quoting requirement to require SLPs to maintain a bid or offer at the NBB or NBO in each assigned security averaging at least 10% of the trading day. *See* Securities Exchange Act Release No. 62791 (August 30, 2010) 75 FR 54411 (September 7, 2010) (SR–NYSE–2010–60) (''SLP 2010 Filing'').

[41] In the SLP 2010 Filing, the Exchange introduced a monthly volume requirement for SLPs of an ADV of more than 10 million shares. *See* SLP 2010 Filing, *supra* note 40. Effective September 1, 2012, the Exchange amended the monthly volume requirement to require instead that SLPs meet an ADV that is more than a specified percentage of the NYSE CADV and amended the Exchange's Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. *See* Securities Exchange Act Release No. 67759 (August 30, 2012), 77 FR 54939 (September 6, 2012) (SR–NYSE–2012–38).

[42] The SLP Pilot was originally available only for a proprietary trading unit of a member organization. In 2012, the Exchange amended NYSE Rule 107B to add the SLMMs as a class of SLPs that are registered as market makers on the Exchange and subject to the market-wide equity market maker quoting obligations. *See* Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR–NYSE–2012–10).

[43] Currently, NYSE Rule 107B(b) incorrectly references subparagraph (j) when referring to the non-regulatory penalties provisions of NYSE Rule 107B. The Exchange proposes to correct that errant cross-reference by changing the reference to subparagraph (k) of NYSE Rule 107B.

non-displayed liquidity posted in round lots in its assigned securities only.

NYSE Rule 107B(c) sets forth the criteria to qualify as an SLP-Prop, which includes having a quoting and volume performance that demonstrates an ability to meet the SLP's quoting requirements under NYSE Rule 107B(a). Under NYSE Rule 107B(d), a member organization may register as an SLMM in one or more securities traded on the Exchange in order to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. If approved as an SLMM, the member organization must: (1) Maintain continuous, two-sided trading interest in assigned securities and meet certain pricing obligations as set forth in NYSE Rule 107B; (2) maintain minimum net capital in accordance with SEC Rule 15c3–1;[44] and (3) maintain unique mnemonics specifically dedicated to SLMM activity, which may not be used for trading in securities other than SLP securities assigned to the SLMM. NYSE Rule 107B(e) sets forth the application process for SLPs, and NYSE Rule 107B(f) describes how an SLP may voluntarily withdraw from such status.

NYSE Rules 107B(g) and (h) set forth how the Exchange calculates whether an SLP is meeting its 10% quoting requirement and monthly volume requirements under NYSE Rule 107B(a), respectively. For instance, under NYSE Rule 107B(g)(1)(D)(ii), an SLP may post non-displayed liquidity, but such liquidity is not counted as credit toward the 10% quoting requirement.

NYSE Rule 107B(i) governs the how securities are assigned to SLPs. NYSE Rule 107B(j) provides that SLPs may only enter orders electronically from off the Floor and may only enter such orders directly into Exchange systems and facilities designated for this purpose. NYSE Rule 107B(j) further provides that SLMM quotes and orders may be for the account of the SLMM in either a proprietary or principal capacity on behalf of an affiliated or unaffiliated person and SLP-Prop orders must only be for the proprietary account of the SLP-Prop member organization. NYSE Rule 107B(k) sets forth non-regulatory penalties that apply if an SLP fails to meet its quoting requirements. Among other things, the rule provides that if an SLP fails to meet its 10% quoting requirement for three consecutive calendar months in any assigned security, the SLP will be in danger of losing its SLP status. The rule also sets forth the reapplication process for member organizations whose SLP applications have been denied or who have been disqualified as an SLP. Rule 107B(l) sets forth provisions for appealing non-regulatory penalties.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[45] which requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade; 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 and that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[46] The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[47] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

A. NMM Pilot

When the Commission approved the NMM, it approved the following key provisions on a pilot basis:[48] (i) the changes to NYSE's priority and order allocation structure under NYSE Rule 72; (ii) the dealings and responsibilities of DMMs, including the affirmative obligation to market quality, the quoting obligation, the re-entry requirements following certain transactions for a DMM's own account, and, implicitly, the elimination of the ''negative obligation''[49] set forth in NYSE Rule 104; and (iii) the provisions related to DMM CCS interest set forth in NYSE Rule 1000.

The Commission approved these provisions on a pilot basis, stating that, ''to be able to take any further action on an NYSE proposal with regard to the [NMM] Pilot, NYSE must provide to [the Commission] on a regular, ongoing basis, statistics relating to market quality and trading activity'' and that analysis of the requested statistics would assist the Commission ''in evaluating the effects of the [NMM] Pilot provisions on NYSE's market quality, and in determining whether the [NMM] Pilot should be permanently approved . . . consistent with the Act.''[50] By requiring the Exchange to submit statistics relating to market quality and trading activity throughout the duration of the NMM Pilot, the Commission sought to determine whether implementation of the NMM Pilot would have a detrimental effect on investors or other market participants.[51]

Since it first adopted the Pilots, the Exchange has provided the Commission, on an ongoing basis, with statistics relating to market quality and trading activity. Furthermore, in its current proposal, the Exchange has provided its own analysis, based on those statistics, of the effect of the Pilots on market quality for investors and other market participants.[52] The Exchange also asserts that the Pilots have enabled the Exchange to remain competitive and to maintain relatively stable market share over the past six years, which, the Exchange notes, have been a period during which traded volume for equities securities has generally shifted away from registered exchanges.[53]

1. NYSE's Priority and Order Allocation Structure Under NYSE Rule 72

As explained above,[54] under the NMM Pilot, all market participants receive executions on parity. The setting

[44] *See* 17 CFR 240.15c3–1.

[45] 15 U.S.C. 78f(b)(5).

[46] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[47] 15 U.S.C. 78f(b)(8).

[48] *See* NMM Approval Order, *supra* note 4, 73 FR at 64390.

[49] The ''negative obligation'' was set forth in the prior version of NYSE Rule 104(a). As the Commission noted in the NMM Approval Order, former ''NYSE Rule 104(a) reflect[ed] NYSE's adoption of the negative obligation and state[d] that 'no specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he or his member organization . . . is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market . . . .'' *See* NMM Approval Order, *supra* note 4, 73 FR at 64379 n.10.

[50] *See* NMM Approval Order, *supra* note 4, 73 FR at 64390. Specifically, the Commission required the Exchange to provide the following monthly data during the term of the NMM Pilot: (1) DMM time at the NBBO by security; (2) the effective spread by security; (3) the DMM volume broken out by ''DMM interest type'' (*e.g.,* CCS, s-Quote) and the total shares traded expressed in twice total volume where both the buy and the sell shares are counted for each trade; (4) the average depth at the NBBO by market participant (DMMs, Floor brokers, and orders represented in the Exchange's book); (5) the ratio of (i) shares not executed in Exchange systems due to DMM execution to (ii) the shares executed by the DMM; and (6) effective spread for (i) orders that involve DMM liquidity provisions and (ii) orders that are executed without DMM liquidity (for similar order size categories). *See id.* at 64387.

[51] *See* NMM Approval Order, *supra* note 4, 73 FR at 64391.

[52] *See* Notice, *supra* note 3, 80 FR at 34722–25.

[53] *See* Notice, *supra* note 3, 80 FR at 34723.

[54] *See supra* Section II.B.1.

interest that establishes the Exchange BBO is entitled to priority and receives the first 15% of any incoming order (subject to a minimum of one round lot) in advance of the regular allocation of that order. For executions outside the Exchange BBO, all displayable interest is executed before any non-displayable interest. Also, under the NMM Pilot, DMMs no longer yield to off-Floor participants. More importantly, while the DMM and each Floor Broker are counted as separate market participants, all off-Floor participants and SLPs are aggregated together and counted as a single market participant.

In the NMM Approval Order, the Commission raised questions about the effects that the Exchange's parity rule might have on market quality, book depth, and execution rates of public customer orders.[55] In seeking to make the Pilots permanent, the Exchange asserts that the monthly statistics provided by the Exchange to the Commission demonstrate that the NMM Pilot has improved market quality by numerous measures.[56] Specifically, based on the statistics the Exchange assembled for the Commission, the Exchange asserts that the rules under the NMM Pilot have been effective at improving the Exchange's spread on marketable orders and the percentage of time that DMMs quote at the NBBO.[57] Additionally, the Exchange argues that, among registered exchanges in what has become a fragmented equity market, the Exchange continues to be a leading liquidity provider because of the diverse population of market participants under the Pilots (*i.e.,* DMMs, SLPs, Floor Brokers, and other off-Floor market participants).[58] In support of these assertions, the Exchange's proposal provides statistics for, and analysis of, six market quality metrics for NYSE-listed Securities, such as the average quoted spread, displayed shares at the NBBO, and time alone at the NBBO.[59]

The Commission has reviewed the data analysis provided by the Exchange and believes that the Exchange has shown that the NMM Pilot, which includes the parity provisions under NYSE Rule 72, has produced sufficient execution quality to attract volume and sufficient incentives to liquidity providers to supply this execution quality. Accordingly, the Commission finds that making the parity rules under NYSE Rule 72 permanent is consistent with the requirements of the Act.

2. Dealings and Responsibilities of DMMs and the Provisions Related to DMM CCS Interest

As explained above,[60] under the NMM Pilot, specialists on the NYSE were eliminated and DMMs were introduced as market participants on the Exchange. DMMs have an affirmative obligation to engage in a course of dealings for their own accounts to assist in the maintenance, so far as reasonably practicable, of a fair and orderly market. Specifically, DMMs have an obligation to use their own capital to contribute to the maintenance of a fair and orderly market, are subject to depth guidelines, and must maintain a bid or an offer at the NBB and NBO for a certain percentage of the trading day. Further, DMMs are required to facilitate transactions in their assigned securities during the opening, reopening, NYSE Midday Auction, and closing transactions. DMMs are no longer given the advance ''look'' at incoming orders that the Exchange's prior Hybrid Market provided to specialists.

In return for incurring these obligations, DMMs are permitted to trade freely for their own accounts on parity with other market participants. Further, the CCS—in which a DMM sets forth additional liquidity that it commits to provide in its assigned securities at specific price points—allows DMMs to trade in their assigned securities with incoming orders at a price inside the Exchange BBO with minimal risk and without contributing to visible depth of the market.[61] Because the NMM provides DMMs with the advantages of being on parity with market participants and of CCS executions, the Commission, in approving these aspects of the NMM as a pilot program, noted that it was ''seeking further evidence that the benefits proposed for DMMs are not disproportionate to their obligations.'' [62]

As noted above, in seeking to make the NMM Pilot permanent, the Exchange asserts that the monthly statistics provided by the Exchange to the Commission demonstrate that the NMM Pilot has improved market quality by numerous measures.[63] Specifically, the Exchange asserts that the NMM Pilot has allowed the Exchange's former specialists and new DMMs to compete, and to contribute to market quality, in a fully electronic trading environment despite challenging conditions over the past several years. The Exchange notes that, between 2009 and 2014, there was a significant decrease in trading volume in the cash equities markets, which resulted in thinner profit margins for market makers and caused turnover among the Exchange's new DMMs and former specialists.[64] The Exchange also argues that the operation of the NMM Pilot has been instrumental in attracting new DMMs to the Exchange at a time when former specialists were exiting the Exchange's market maker business.[65]

Additionally, the Exchange asserts that DMMs—as well as SLPs—have been important contributors to the Exchange's ability to set the NBBO. The Exchange represents that, during 2014, DMMs quoted at the inside of the NBBO almost 30% of the time on average and that, during the same period, an average of 8.3% of DMM execution volume improved the NBBO at the time the executed quotes were entered.[66] Further, the Exchange asserts that its statistics and analysis demonstrate that the rules under the NMM Pilot have been effective at improving the percentage of time that DMMs quote at the NBBO and the percentage of DMM participation in total trading volume.[67]

The Commission has reviewed the data analysis provided by the Exchange and believes that the Exchange has shown that the NMM Pilot, which includes the DMM dealings and responsibilities provisions and the CCS interest provisions of NYSE Rules 104 and 1000, respectively, has produced sufficient execution quality to attract volume and sufficient incentives to liquidity providers to supply this execution quality. Accordingly, the Commission finds that making NYSE Rule 104 and the CCS provisions under NYSE Rule 1000 permanent is consistent with the requirements of the Act.

B. SLP Pilot

The Exchange represents that it adopted the SLP Pilot to encourage an additional pool of liquidity at the Exchange following the approval of the NMM Pilot.[68] As explained above,[69]

[55] *See* NMM Approval Order, *supra* note 4, 73 FR at 64389.

[56] *See* Notice, *supra* note 3, 80 FR at 34726.

[57] *See* Notice, *supra* note 3, 80 FR at 34725.

[58] *See* Notice, *supra* note 3, 80 FR at 34724.

[59] *See id.*

[60] *See supra* Sections II.B.2 & .3.

[61] *See* NMM Approval Order, *supra* note 4, 73 FR at 64389.

[62] *See id.*

[63] *See* Notice, *supra* note 3, 80 FR at 34726.

[64] *See* Notice, *supra* note 3, 80 FR at 34723–24.

[65] *See id.* at 34724.

[66] *See id.*

[67] *See id.* at 34725. Specifically, the Exchange represents that the percentage of the time that DMMs were quoting at the NBBO, which ranged from 9.9% to 19% from August to December 2008, have exceeded 20% since that time and ranged from 31.3% to 39.2% in the period from November 2013 to November 2014. *See id.*

[68] *See* Notice, *supra* note 3, 80 FR at 34722.

[69] *See supra* Section II.B.4.

SLPs are obligated to: (1) Maintain a bid or an offer at the NBB or NBO in each assigned security in round lots at least 10% of the trading day on average; and (2) add a certain volume of liquidity for all assigned SLP securities. SLMMs have continuous two-sided quoting obligations and must meet certain pricing obligations for those quotes. As a benefit for incurring these obligations, SLPs receive a financial rebate for each transaction when liquidity that the SLP posts on the Exchange is executed against an inbound order. When it adopted the SLP Pilot, the Exchange represented that it would use the SLP Pilot period to identify and address any administrative or operational problems prior to expanding it.[70] The Exchange also opined that the Pilot period would provide SLPs with ''essential practical experience with the new program and enable the SLPs to become proficient in the SLP role before expanding the assigned securities to all NYSE-listed securities.'' [71]

In seeking to make the SLP Pilot permanent, the Exchange has explained that the number of stocks quoted by at least one SLP has increased substantially since it first launched the SLP Pilot.[72] The Exchange represents that: (1) Through December 2014, SLPs represented 25.2% of liquidity-providing execution; and (2) SLPs currently account for 13.3% of the liquidity-providing volume in issues outside of the Exchange's 1,000 most active issues.[73] The Exchange also states that SLPs—along with DMMs—have been important contributors to the Exchange's ability to set the NBBO.[74]

The Commission has reviewed the data analysis provided by the Exchange and believes that the Exchange has shown that the SLP Pilot, as part of the NMM Pilot, has produced sufficient execution quality to attract volume and sufficient incentives to liquidity providers to supply this execution quality. Accordingly, the Commission finds that making the provisions governing SLPs set forth in NYSE Rule 107B permanent is consistent with the requirements of the Act.

C. Additional Proposed Rule Changes

The Exchange proposes to delete: (1) NYSE Rule 104T, which is no longer operative because the Commission approved the NMM Pilot; (2) NYSE Rule 104.05, which was only intended to be effective through October 31, 2009; and (3) a related reference to NYSE Rule 104.05. The Commission finds that these proposed deletions from the Exchange's rule text are consistent with the Act because they remove text from the Exchange's rulebook that is extraneous, particularly now that the Commission is approving the NMM and SLP programs on a permanent basis.

Furthermore, the Exchange proposes to: (1) Replace the term ''Display Book'' with either the term ''Exchange systems'' or ''Exchange book'' throughout NYSE Rules 104 and 1000; (2) in NYSE Rule 104(k), replace the term ''NYSE Regulation's Division of Market Surveillance'' with the term ''the Exchange'' pursuant to NYSE Rule 0; and (3) correct an errant cross reference in NYSE Rule 107B(b). The Commission finds that these additional changes are consistent with the Act because they will provide additional clarity and consistency throughout the current NMM rules.

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,[75] the proposed rule change (SR–NYSE–2015–26) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Robert W. Errett,

Deputy Secretary.

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[70] *See* SLP Notice, *supra* note 11, 73 FR at 65905.

[71] *See id.*

[72] *See* Notice, *supra* note 3, 80 FR at 34725. The Exchange represents that when it first launched the SLP Pilot, only 497 symbols were covered by an SLP and that, by the end of September 2014, ''nearly every Exchange symbol, including operating companies, preferred stocks, warrants, rights and all other issue types, had at least once SLP quoting in it.'' *See id.*

[73] *See id.*

[74] *See id.* at 34724.

[75] 15 U.S.C. 78s(b)(2).

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75582; File No. SR–CME–2015–014]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Performance Bond Collateral Program To Include Australian Government Debt, Singapore Government Debt, and Ontario and Quebec Canadian Provincial Debt

July 31, 2015.

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 July 24, 2015, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] so that the proposal was effective upon filing with the Commission. 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

CME is proposing to announce via Advisory Notice the expansion of its collateral program to include Australian Government debt, Singapore Government debt, and Ontario and Quebec Provincial debt. More specifically, CME is proposing to issue a CME Clearing Advisory Notice to clearing member firms announcing an expansion of its performance bond collateral program for Base, IRS and CDS Guaranty Fund products to include certain discount bills, notes and bonds issued by the Australian Government (''AGBs''), Singapore Government (''SGBs''), and the Canadian Provinces of Ontario and Quebec (''CPBs''). The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).