

proposed rule change to be operative upon filing with the Commission.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>20</sup>

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-03 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-03. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such filing also will be available for

<sup>19</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(C).

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-2014-03 and should be submitted on or before February 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71360; File No. SR-NYSE-2014-02]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Supplementary Material .20 to Rule 103 Which Sets Forth Net Liquid Assets Requirements for Member Organizations That Operate as Designated Market Maker Units

January 21, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 6, 2014, the New York Stock Exchange LLC (the "Exchange" or "NYSE") 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 to amend Supplementary Material .20 to Rule 103 ("Rule 103.20"), which sets forth net liquid assets requirements for member organizations that operate as Designated Market Maker ("DMM") units ("DMM units"). The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

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 Exchange 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 103.20, which sets forth net liquid assets requirements for member organizations that operate as DMM units.<sup>3</sup> Specifically, the Exchange proposes to change the types of financial assets and resources that would count toward meeting the net liquid assets requirement without reducing the level of the overall requirement and reorganize and add detail to the rule so that it is easier to understand.

###### Current Rule

Under Rule 103.20, the Exchange imposes a net liquid assets requirement on each DMM unit subject to Rule 104 that typically far exceeds the minimum net capital requirement applicable to a broker-dealer under Commission Rule 15c3-1 ("SEC Net Capital Rule").<sup>4</sup> The purpose of the Exchange's requirement is to reasonably assure that each DMM unit maintains sufficient liquidity to carry out its obligation to maintain an orderly market in its assigned securities in times of market stress. The Exchange established the formula for the current net liquid assets requirement in July 2011, which results in the aggregate net

<sup>3</sup> Pursuant to Rule 2(j), a DMM unit is defined as a member organization or unit within a member organization that has been approved to act as a DMM unit under Rule 98. Pursuant to Rule 2(i), a DMM is defined as an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. All references to rules herein are to NYSE rules, unless otherwise noted.

<sup>4</sup> 17 CFR 240.15c3-1.

liquid assets of all DMM units equaling at least \$125 million.<sup>5</sup>

Under current Rule 103.20, each DMM unit must maintain or have allocated to it net liquid assets that are the greater of (1) \$1 million or (2) \$125,000 for each one-tenth of one percent (0.1%) of Exchange transaction dollar volume<sup>6</sup> in its registered securities exclusive of Exchange Traded Funds (“ETFs”), plus \$500,000 for each ETF, plus a market risk add-on of the average of the prior 20 business days’ securities haircuts on its DMM dealer’s positions computed pursuant to paragraph (c)(2)(vi), exclusive of paragraph (N), under the SEC Net Capital Rule. If the DMM unit is registered in ETFs, then it must maintain the greater of \$500,000 for each ETF or \$1 million. A DMM unit must inform NYSE Regulation immediately whenever the DMM unit is unable to comply with these requirements.

The term “net liquid assets” is defined as excess net capital computed in accordance with the SEC Net Capital Rule and Rule 325, with the following adjustments:

(1) Additions for haircuts and undue concentration charges taken pursuant to Section (c)(2)(vi)(M) of the SEC Net Capital Rule on registered securities in dealer accounts;

(2) Deductions for clearing organization deposits; and

(3) Deductions for any cash surrender value of life insurance policies allowable under the SEC Net Capital Rule.

If two or more DMM units are associated with each other and deal for the same DMM unit account, then the capital requirement of Rule 103.20 applies to such DMM units as one unit, rather than to each DMM unit individually. Any joint account must be approved by NYSE Regulation.

Notwithstanding Rule 98, the DMM unit’s net liquid assets needed to meet the requirements of Rule 103.20 must be dedicated exclusively to DMM dealer activities and must not be used for any other purpose without the express written consent of NYSE Regulation.

Solely for the purpose of maintaining a fair and orderly market, NYSE Regulation may, for a period not to exceed five business days, allow a DMM unit to continue to operate despite such DMM unit’s noncompliance with the

provisions of the minimum requirements of Rule 103.20.

#### Developments Since July 2011 Rule Implementation

A determination of whether Rule 103.20 is appropriately calibrated such that it is consistent with the overall level of DMM unit risk involves consideration and assessment of many factors, including legal and regulatory developments, market fragmentation, DMM unit end-of-day inventory positions and position duration, and the use of technology to manage market volatility. Since July 2011, the Exchange has continued to regularly assess these factors.

With respect to legal and regulatory developments, the Exchange states that the allocation of capital by market participants has become much more disciplined and stringent following passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>7</sup> and in light of the impending U.S. implementation of the Basel III regulatory capital reforms from the Basel Committee on Banking Supervision.<sup>8</sup> DMMs frequently are established in segregated units where capital cannot be leveraged across other business activities, as it can in other traditional market making businesses. The Exchange notes that overall DMM unit risk levels have continued to decline due to, among other things, implementation of marketwide volatility controls (e.g., Limit Up/Limit Down price controls),<sup>9</sup> enhanced technology resulting in reduced trading latency levels, clearing organization risk control enhancements, tighter percentage triggers on marketwide circuit breakers,<sup>10</sup> pre-trade risk controls (i.e., SEC Rule 15c3-5,<sup>11</sup> the “Market Access Rule”), and clearly defined Clearly Erroneous Execution parameters and processes.<sup>12</sup> These initiatives have contributed to reducing the potential for significant and/or rapid movements in the market and help DMM units in satisfying their obligation to maintain an orderly market in assigned securities in

times of market stress. The Exchange also recently filed to adopt optional “kill switch” mechanisms to reduce systemic risk for member organizations, which is a market-wide initiative that has been discussed among several U.S. equity exchanges.<sup>13</sup>

With respect to market fragmentation, the Exchange notes that both the overall consolidated Tape A volume as well as the Exchange’s average daily volume of shares traded have declined approximately 30% since 2010, therefore resulting in less trading both market-wide and at the Exchange in the securities assigned to DMMs.

As a result of this decline in marketplace volume and other factors, the regular need for capital to fund end-of-day position inventories has also declined. For example, the average value of DMM units’ end-of-day position inventories decreased by over 50% since the last time the Exchange filed to amend the DMM net capital requirements. As a result, the need to keep dedicated capital in the DMM unit is inefficient and this proposal, as described below, would provide for the ability to utilize capital in a more efficient manner. This decrease in inventories also indicates that DMM units are carrying significantly less overnight risk. Moreover, the duration of a position is also much shorter than it was in years past, which has further contributed to reducing overall DMM risk. Speed is a key tool for managing risk, and the Exchange’s focus on reducing round-trip order execution times has helped DMM units reduce exposure time and better manage their risks, while allowing them to offer better, more competitively-priced quotes. The Exchange’s round trip for marketable order executions has declined from several hundred milliseconds in Q4 2010 to less than 1 millisecond in Q4 2013, based on an average of the medians.

Finally, as the Exchange’s marketplace has become more electronic, DMM units have also increased their utilization of technology to reduce risk exposure, in particular by using algorithms to adjust prices quickly in response to market dynamics. In this regard, rapidly incorporating market information into quotes provides better pricing for investors, better risk control mechanisms for DMM units and therefore a marketplace with greater stability and resilience, all of which the Exchange believes contributes to reducing DMM unit risk.

<sup>7</sup> Public Law 111–203, 124 Stat. 1376 (2010).

<sup>8</sup> See 78 FR 62018 (October 11, 2013) (Adoption of Regulatory Capital Rules by the Office of the Comptroller of the Currency and the Federal Reserve Board: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule).

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 70530 (September 26, 2013), 78 FR 60937 (October 2, 2013) (File No. 4–631).

<sup>10</sup> See Rule 80B.

<sup>11</sup> 17 CFR 240.15c3-5.

<sup>12</sup> See Rule 128.

<sup>13</sup> See Securities Exchange Act Release No. 71164 (December 20, 2013), 78 FR 79044 (December 27, 2013) (SR–NYSE–2013–80).

<sup>5</sup> See Securities Exchange Act Release No. 64918 (July 19, 2011), 76 FR 44390 (July 25, 2011) (SR–NYSE–2011–35).

<sup>6</sup> The term “Exchange transaction dollar volume” means the most recent Statistical Data, calculated and provided by the NYSE on a monthly basis.

### Proposed Rule Change

In light of these developments, the Exchange believes that it is now appropriate to amend the rule to expand the types of financial assets and resources permitted to be used to meet the net liquid assets requirement without changing the aggregate level of net liquid assets maintained by all DMM units. The Exchange notes that the proposed rule change is designed to promote a more efficient use of capital. The Exchange believes that the current structure may act as a barrier to entry for potential new DMM units because market makers and traders on other U.S. equity exchanges are not subject to any additional net capital requirements beyond the minimum net capital required by the SEC Net Capital Rule. Providing a broader range of alternatives for meeting the net liquid assets requirement would reduce that barrier to entry and reduce the inefficient use of capital. The Exchange also believes that Rule 103.20 should be revised and reorganized in a manner that would make it clearer and easier to understand.

Proposed Rule 103.20(a) would contain new text setting forth definitions. The term “Net Liquid Assets” would be redefined to mean the sum of (A) “Excess Net Capital” and (B) “Liquidity” dedicated to the DMM unit.<sup>14</sup> The term “Excess Net Capital” would have the same meaning as the term excess net capital as computed in accordance with the SEC Net Capital Rule. This would mean the amount identified as item number 3770 of SEC Form X-17A-5 (“FOCUS Report”), except for DMM units that compute net capital under the alternative standard, for which it would mean item number 3910 of the FOCUS Report. The additions to and deletions from net liquid assets under current Rule 103.20(a)(iv)(A)–(C) as described above would no longer apply.

Liquidity would be defined to mean undrawn or actual borrowings that are dedicated to the DMM unit’s business, including:

(A) Undrawn committed lines of credit from a bank, as defined in Section 3(a)(6) of the Act;<sup>15</sup>

(B) undrawn committed lines of credit from an affiliate of the DMM unit or

<sup>14</sup> The capitalized, defined terms used in the proposed rule change would have the specific meanings proposed herein. Non-capitalized forms of the terms (e.g., liquidity instead of Liquidity) would have the general industry meaning. The Exchange proposes to amend the title of Rule 103.20 to be “DMM Financial Requirements,” instead of the current “DMM Capital Requirements” title, to reflect the proposed alternatives to capital when determining Net Liquid Assets.

<sup>15</sup> 15 U.S.C. 78c(a)(6).

from the member organization of which the DMM unit is a part; and

(C) actual borrowings after the effective date of the rule that (i) have been used to purchase DMM unit securities, U.S. Treasury securities, or reverse repurchase agreements collateralized by U.S. Treasury securities, or (ii) are held as cash.<sup>16</sup>

Proposed Rule 103.20(b)(1) would set forth the minimum Net Liquid Assets requirement. The proposed rule change draws from the text of current Rules 103.20(a) and (b), but reorders the text using the new definitions proposed above to make it easier to understand. As noted above, the aggregate level of Net Liquid Assets of \$125 million would not change, but the permitted components of Net Liquid Assets and proportions thereof would change. Thus, proposed Rule 103.20(b)(1) would provide that each DMM unit must at all times maintain or have allocated to it minimum Net Liquid Assets equal to the greater of (i) \$1 million or (ii) \$125,000 for every 0.1% of Exchange Transaction Dollar Volume<sup>17</sup> in each of the DMM unit’s registered securities. The market risk add-on requirement under current Rule 103.20(b)(i)(B) as described above would no longer apply.

Under the proposed rule change, there would no longer be a separate financial requirement for ETFs,<sup>18</sup> thus harmonizing the financial requirements applicable to ETFs with those applicable to other securities. Although the Exchange does not currently list or trade any ETFs or other exchange traded products (“ETPs”), future business developments could result in an expansion of products traded on the Exchange to include them. Under the current rule, if a DMM unit were assigned a significant number of ETFs, the net liquid assets requirements for those ETFs would significantly exceed the net liquid assets requirements applicable to an equal number of other securities. The Exchange believes that ETFs and ETPs should be subject to the same requirements as other securities.<sup>19</sup>

<sup>16</sup> If a DMM utilizes an undrawn committed line of credit after the effective date of the rule to make such purchases, the amount of the credit line would continue to count toward Liquidity. Any reduction in the value of purchased securities would be reflected in Excess Net Capital.

<sup>17</sup> The meaning of Exchange Transaction Dollar Volume would not change, but it would become a defined term for purposes of Rule 103.20. *See, e.g.*, current Rule 103.20(b)(iii), proposed Rule 103.20(a)(4) and *supra* note 6.

<sup>18</sup> *See* current Rules 103.20(a)(ii) and (b)(i)(A).

<sup>19</sup> The Exchange further notes that the current ETF financial requirements date back to a time when the overall financial requirements for specialists (predecessors to DMM units) were significantly higher, and have not been modernized to account for a changing micro and macro market

Under proposed Rule 103.20(b)(2), the portion of a DMM unit’s Net Liquid Assets that is derived from Excess Net Capital must at all times equal or exceed 40% of a DMM unit’s total Net Liquid Assets requirement. Excess Net Capital that is allocated to the DMM unit must be dedicated exclusively to the DMM unit’s activities and may not be used by other business units within, or for any other purpose of, the member organization. This is designed to reasonably assure that DMM units maintain sufficient levels of Excess Net Capital and that their Net Liquid Assets are not overly weighted with borrowings or credit lines.

Proposed Rule 103.20(b)(3) would be substantially the same as current Rule 103.20(a)(v). The proposed rule would provide that if two or more DMM units were associated with each other and deal for the same joint DMM unit account, the Net Liquid Assets requirements enumerated in proposed Rule 103.20 would apply to such DMM units treated as one unit, rather than to each DMM unit individually, and any joint account involving two or more DMM units would be required to be approved in writing by NYSE Regulation or its designee.

Under proposed Rule 103.20(b)(4), all Liquidity would be required to be subject to a written agreement that provided for a commitment period of not less than 30 calendar days and, once borrowed, an initial repayment term of not less than 30 calendar days, and an unconditional, irrevocable commitment with no material adverse change or other limiting clauses, other than provisions to accelerate the commitment period to 30 calendar days. Such written agreement must be made available to the Exchange upon request.

Under proposed Rule 103.20(b)(5), all Liquidity provided via a commitment to a DMM unit from an affiliate, or to a DMM unit from the member organization of which the DMM unit is a part, would be required to be included in a comprehensive liquidity plan prepared by the affiliate or the member organization, as the case may be, that provided for stress testing of the overall Liquidity of all entities that rely on such Liquidity, including the DMM unit, and the plan must show excess Liquidity for a period of at least 30 calendar days beyond the date that the DMM unit is relying on Liquidity for its Net Liquid Assets computation. The DMM unit would be required to arrange for the

structure, despite decreases in the financial requirements applicable to other securities. *See* Securities Exchange Act Release No. 54205 (July 25, 2006), 71 FR 43260 (July 31, 2006) (SR–NYSE–2005–38).

affiliate(s), or the member organization of which the DMM unit is a part, to submit liquidity plans to the Exchange or its designee upon request.

The requirement that DMM units notify the Exchange if they are unable to satisfy the requirements of Rule 103.20 would be moved from current Rule 103.20(a)(iii) to proposed Rule 103.20(c), titled "Notification Requirements," and further revised. Proposed Rule 103.20(c)(1) would specify that a DMM unit must immediately notify the Exchange when (A) the DMM unit's Net Liquid Assets fall below the minimum requirements; (B) the percentage of Net Liquid Assets derived from the DMM unit's Excess Net Capital falls below 40% of the total Net Liquid Assets requirement; (C) Liquidity has a commitment term of less than 30 calendar days from the date of the DMM unit's Net Liquid Assets computation; (D) the DMM unit is not in compliance with one or more terms of its loan or commitment agreements relating to its DMM activities; or (E) the repayment date of any actual borrowing is 30 days or less. The Exchange would also maintain the current provision under Rule 103.20(c) that provides the Exchange with the flexibility to allow a DMM unit to continue to operate as such for a limited period of time despite not meeting certain requirements of Rule 103.20. Specifically, proposed Rule 103.20(c)(2) would provide that if the Exchange received notice of a condition under proposed Rule 103.20(c)(1), the Exchange could allow a DMM unit to continue to operate as such for a period not to exceed five business days from the date of such notice in order to permit the DMM unit to resolve such condition. If the DMM unit were granted such a period and timely resolved the condition requiring notice under paragraph (c)(1), it could continue to operate as a DMM unit thereafter. The Exchange notes that regardless of whether a resolution period was granted, the Exchange retains the discretion to take enforcement action against any member organization for non-compliance with the Exchange's rules in appropriate circumstances.

The Exchange believes that the proposed change would result in DMM units maintaining a robust level of capital through a means that is less burdensome for DMM units to satisfy. The Exchange notes that it would continue to assess DMM unit financial requirements and that the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, would monitor DMM unit Net Liquid

Assets on a daily basis.<sup>20</sup> The Exchange would notify DMM units of the implementation date of this rule change via a Member Education Bulletin.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that DMM units would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by reducing the burden on DMM units to maintain inordinate levels of excess net capital. The Exchange believes that using Liquidity to satisfy a portion of the DMM unit Net Liquid Assets requirements would be more efficient and less burdensome than the existing requirements, under which DMM units must generally maintain materially more net liquid assets than they have historically needed on a day-to-day basis. When maintained as excess net capital, these "excess" assets cannot be as efficiently utilized. The Exchange further anticipates that Liquidity would generally be made available to a DMM unit at a lower cost than additional capital.

<sup>20</sup> See Rule 0 (describing the regulatory services agreement between NYSE and FINRA). In particular, FINRA would monitor actual DMM unit borrowings after the effective date of the proposed rule to assess whether proceeds have been used to purchase DMM unit securities, U.S. Treasury securities, or reverse repurchase agreements collateralized by U.S. Treasury securities, or are held as cash. This could be accomplished, for example, by comparing the timing of the borrowings to the timing of a DMM unit's purchases of the corresponding assets.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that using a combination of Excess Net Capital and Liquidity for purposes of satisfying the DMM unit Net Liquid Assets requirement would reasonably assure that DMM units have sufficient liquidity to carry out their obligations to maintain an orderly market in their assigned securities in times of market stress. In this regard, the Exchange notes that overall DMM unit risk levels have continued to decline due to, among other things, implementation of marketwide volatility controls (e.g., Limit Up/Limit Down price controls), enhanced technology resulting in reduced trading latency levels, clearing organization risk control enhancements, tighter percentage triggers on marketwide circuit breakers, pre-trade risk controls (i.e., the Market Access Rule), and clearly defined Clearly Erroneous Execution parameters and processes. These initiatives have contributed to reducing the potential for significant and/or rapid movements in the market and provide support to DMM units in satisfying their obligation to maintain an orderly market in assigned securities in times of market stress. An initiative to develop a marketwide "kill switch" to reduce systemic risk has also been discussed among several U.S. equity exchanges. The Exchange further believes that continued market fragmentation, the decline in the average value of DMM units' end-of-day position inventories and the shorter duration of positions, and improved technology to manage market risk also support the proposed rule change.

The need for a source of liquid assets could occur during times of market stress when DMM units need to acquire more and larger positions at times when their capital levels are largely comprised of DMM unit positions and their liquidity has been exhausted. While these purchases and sales of DMM unit positions are generally "capital neutral," absent a significant market movement, to the extent the DMM unit needs to engage in additional transactions, it could require additional liquidity to settle these transactions. The Exchange believes that requiring at least 40% of the Net Liquid Assets requirement to be satisfied by Excess Net Capital, rather than Liquidity, would be consistent with the Act and protect investors and the public interest because it is set at a level that the Exchange believes exceeds the amount of capital that historical DMM unit losses have required. Additionally, 40% would be the minimum level of Excess Net Capital to satisfy the Net Liquid Assets requirement, such that DMM

units would remain able to maintain higher levels of Excess Net Capital and therefore be less weighted with Liquidity. Also, while the market risk add-on under current Rule 103.20(b)(i)(B) would no longer apply to the amount of Excess Net Capital that the DMM unit must maintain, neither would the additions to net liquid assets allowed for haircuts and undue concentration charges under current Rule 103.20(a)(iv), therefore effectively cancelling each other out.

The Exchange further believes that the proposed change would protect investors and the public interest by reducing existing barriers to entry for new DMM units and mitigating the potential loss of existing DMM units. Stabilizing and increasing the pool of DMM units with a more efficient financial structure would be beneficial to the Exchange and would also enhance market quality and thereby support investor protection and public interest goals.

The Exchange believes that harmonizing the financial requirements applicable to ETFs with those applicable to other securities would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by eliminating a potential disincentive to seeking appointment as a DMM unit in ETFs. Investors would continue to be protected and the public interest would continue to be served because DMM units appointed to ETFs would be subject to the same Net Liquid Assets requirements as DMM units appointed to other securities, which would reasonably assure maintenance of sufficient liquidity to carry out DMM unit obligations to maintain an orderly market in such assigned ETFs in times of market stress. The Exchange does not believe that there is a basis to conclude that ETFs subject DMM units to greater risk than other securities. The Exchange therefore does not believe that there is a need for DMM units to maintain capital for ETFs or ETPs at levels that are greater than the levels required for other securities.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>23</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to amend the structure of DMM unit financial requirements, but not the overall level thereof. This proposed change in the structure of required DMM unit capital would eliminate a potential barrier to entry for new DMM units and thereby promote intramarket competition.

The Exchange notes that market makers and traders on other U.S. equity exchanges are not subject to financial requirements beyond those required by the SEC Net Capital Rule. Nonetheless, DMM units have unique affirmative obligations and the Exchange continues to believe that it is appropriate that their financial requirements be higher than other market participants. The proposal would support intermarket competition by structuring DMM unit financial requirements in a way that is more manageable for member organizations, including both existing and potential future DMM units, and would thereby promote greater interest in seeking DMM unit appointments on the Exchange rather than as comparable market participants on other markets.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *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 within such longer period (i) as the Commission may designate up to 90 days of such date 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2014-02 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-02. This file number should be included on the subject line if email 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 Web site (<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 Web site 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.

<sup>23</sup> 15 U.S.C. 78f(b)(8).

All submissions should refer to File Number SR-NYSE-2014-02 and should be submitted on or before February 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71362; File No. SR-NYSE-2014-03]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Extend the Operation of Its Supplemental Liquidity Providers Pilot, Currently Scheduled To Expire on January 31, 2014, Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or July 31, 2014

January 21, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 6, 2014, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 to extend the operation of its Supplemental Liquidity Providers Pilot ("SLP Pilot" or "Pilot") (See Rule 107B), currently scheduled to expire on January 31, 2014, until the earlier of the Securities and Exchange Commission's ("Commission") approval to make such Pilot permanent or July 31, 2014. The text of the proposed rule change is available on the Exchange's Web site 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 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 to extend the operation of its SLP Pilot,<sup>3</sup> currently scheduled to expire on January 31, 2014, until the earlier of Commission approval to make such Pilot permanent or July 31, 2014.

###### Background<sup>4</sup>

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed

to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the "New Market Model" ("NMM Pilot").<sup>5</sup> The SLP Pilot was launched in coordination with the NMM Pilot (see Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.<sup>6</sup> Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.<sup>7</sup>

The SLP Pilot is scheduled to end operation on January 31, 2014 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before January 31, 2014.<sup>8</sup>

##### Proposal to Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange

<sup>3</sup> See Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR-NYSE-2008-108) (establishing the SLP Pilot). See also Securities Exchange Act Release Nos.

59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR-NYSE-2009-46) (extending the operation of the SLP Pilot to October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR-NYSE-2009-100) (extending the operation of the NMM and the SLP Pilots to November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR-NYSE-2009-119) (extending the operation of the SLP Pilot to March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR-NYSE-2010-28) (extending the operation of the SLP Pilot to September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR-NYSE-2010-62) (extending the operation of the SLP Pilot to January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR-NYSE-2010-86) (extending the operation of the SLP Pilot to August 1, 2011); 64762 (June 28, 2011), 76 FR 39145 (July 5, 2011) (SR-NYSE-2011-30) (extending the operation of the SLP Pilot to January 31, 2012); 66045 (December 23, 2011), 76 FR 82342 (December 30, 2011) (SR-NYSE-2011-66) (extending the operation of the SLP Pilot to July 31, 2012); 67493 (July 25, 2012), 77 FR 45388 (July 31, 2012) (SR-NYSE-2012-27) (extending the operation of the SLP Pilot to January 31, 2013); 68560 (January 2, 2013), 78 FR 1280 (January 8, 2013) (SR-NYSE-2012-76) (extending the operation of the SLP Pilot to July 31, 2013); and 69819 (June 21, 2013), 78 FR 38764 (June 27, 2013) (SR-NYSE-2013-44) (extending the operation of the SLP Pilot to January 31, 2014).

<sup>4</sup> The information contained herein is a summary of the NMM Pilot and the SLP Pilot. See *supra* note 3 and *infra* note 5 for a fuller description of those pilots.

<sup>5</sup> See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46).

<sup>6</sup> See NYSE Rule 103.

<sup>7</sup> See NYSE Rule 107B. The Exchange amended the monthly volume requirements to an ADV that is a specified percentage of NYSE CADV. See Securities Exchange Act Release No. 67759 (August 30, 2012), 77 FR 54939 (September 6, 2012) (SR-NYSE-2012-38).

<sup>8</sup> The NMM Pilot was scheduled to expire on January 31, 2014. On January 6, 2014, the Exchange filed to extend the NMM Pilot until July 31, 2014. See (SR-NYSE-2013-01) [sic]. See also Securities Exchange Act Release Nos. 69813 (June 20, 2013), 78 FR 38753 (June 27, 2013) (SR-NYSE-2013-43) (extending the operation of the NMM Pilot to January 31, 2014); 68558 (January 2, 2013), 78 FR 1288 (January 8, 2013) (SR-NYSE-2012-75) (extending the operation of the NMM Pilot to July 31, 2013); 67494 (July 25, 2012), 77 FR 45408 (July 31, 2012) (SR-NYSE-2012-26) (extending the operation of the NMM Pilot to January 31, 2013); 66046 (December 23, 2011), 76 FR 82340 (December 30, 2011) (SR-NYSE-2011-65) (extending the operation of the NMM Pilot to July 31, 2012); 64761 (June 28, 2011) 76 FR 39147 (July 5, 2011) (SR-NYSE-2011-29) (extending the operation of the NMM Pilot to January 31, 2012); 63618 (December 29, 2010) 76 FR 617 (January 5, 2011) (SR-NYSE-2010-85) (extending the operation of the NMM Pilot to August 1, 2011); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR-NYSE-2010-61) (extending the operation of the NMM Pilot to January 31, 2011); 61724 (March 17, 2010), 75 FR 14221 (SR-NYSE-2010-25) (extending the operation of the NMM Pilot to September 30, 2010); and 61031 (November 19, 2009), 74 FR 62368 (SR-NYSE-2009-113) (extending the operation of the NMM Pilot to March 30, 2010).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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