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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80723; File No. SR-NYSEMKT-2017-27)

May 18, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 103B – Equities

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on May 4, 2017, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “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 amend Rule 103B – Equities, which governs the allocation of securities to Designated Market Makers (“DMMs”). The proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend Rule 103B – Equities (“Rule 103B”), which governs the allocation of securities to DMMs, to streamline the allocation process and facilitate the selection of DMM units by issuers. Specifically, as described in more detail below, the Exchange proposes to:

- amend Rule 103B(III)(A), which provides for issuer selection of DMM units, to require issuers select a minimum of four DMM units to interview, permit senior officials at issuers to designate a representative to attend DMM interviews, and eliminate the cap on the number of DMM representatives that can participate in issuer interviews;
- amend Rule 103B(III)(B), which provides for selection of DMM units by the Exchange, to remove the requirement that the Exchange Selection Panel (“ESP”) base its review only on information available to an issuer and reduce the size of the ESP to three Exchange employees designated by the Chief Executive Officer;
- renumber Rule 103B(III)(B)(2), which describes the DMM one

year obligation, as new Rule 103B(III)(C) and make certain non-substantive changes to the existing rule text;

- renumber Rule 103B(III)(B)(3), which describes foreign listing considerations, as new Rule 103B(III)(D);
- amend Rule 103B(VI)(F), governing allocation of closed-end management investment companies, to specify that the group of eligible DMM units an issuer listing additional funds can select from also includes DMM units the issuer “reviewed” during the initial allocation;
- amend Rule 103B(VI)(G), governing the allocation freeze policy, to replace references to “specialty stock” with “DMM interest”; and
- amend Rule 103B(VI)(H), setting forth the allocation sunset policy, to provide that allocation decisions remain effective for initial public offerings (“IPO”) that list on the Exchange within eighteen months of such decision rather than the current twelve months and to specify that, in situations where the proposed individual DMM is no longer with the selected DMM unit, the company may choose to stay with the selected DMM or be referred to allocation and may interview a replacement individual DMM prior to making that decision.

The proposed changes are based on recently adopted Exchange Rule 7.25E (DMM Security Allocation and Reallocation), which will govern, among other things, the

allocation and reallocation of securities to DMMs once the Exchange transitions its cash equities trading platform to a fully automated price-time priority allocation model.⁴

Current Rule 103B

Rule 103B currently provides two options for the allocation of securities to DMMs: (1) the issuer selects the DMM unit; or (2) the issuer delegates selection of the DMM unit to the Exchange.

If the issuer proceeds under the first option, the listing company selects a minimum of two DMM units to interview.⁵ A DMM unit's eligibility to participate in the allocation process is based on objective criteria and determined at the time the interview is scheduled. No more than three representatives of each DMM unit may currently participate in the interview, each of whom must be employees of the DMM unit.⁶

Within five business days after the issuer selects the DMM units to be interviewed, the issuer meets with representatives of each of the DMM units. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. Additionally, no more than three representatives of each DMM unit may participate in the meeting, each of whom must be an employee of the DMM unit, and one of whom must be the individual DMM who is proposed to trade the company's security, unless that DMM is unavailable to appear, in which case a telephone interview is permitted.

Following the interview, a DMM unit may not have any contact with an issuer. If

⁴ See Securities Exchange Act Release No. 80577 (May 2, 2017) (SR-NYSEMKT-2017-04).

⁵ See Rule 103B(III)(A)(1).

⁶ See Rule 103B(III)(A)(2)(b).

an issuer has a follow-up question regarding any DMM unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange then contacts the unit(s) to which the question pertains and provides any available information received from the unit(s) to the listing company. Within two business days of the issuer's interviews with the DMM units, the issuer selects its DMM unit in writing. The Exchange then confirms the allocation of the security to that DMM unit, at which time the security is deemed to have been so allocated.

If the issuer proceeds under the second option and delegates selection of the DMM unit to the Exchange, the Exchange convenes an ESP to select the DMM unit based on a review of all information available to the issuer. The current ESP must consist of (1) at least one member of the Exchange's Senior Management, as designated by the CEO or his or her designee, (2) any combination of two Exchange Senior Management or Exchange Floor Operations Staff, to be designated by the Executive Vice-President of Exchange Floor Operations or his/her designee; and (3) three non-DMM Floor Governors for a total of six members.⁷

Proposed Rule Change

The Exchange proposes the following changes to Rule 103B to align the Rule with NYSE Rule 103B and streamline the allocation process and facilitate the selection of DMM units by issuers, as follows.

Rule 103B(III)(A) – Issuer Selection of DMM Unit by Interview

Rule 103B(III)(A) is currently titled “DMM Unit Selected by the Issuer” and describes the first allocation option, which is selection of a DMM unit by the issuer

⁷ See Rule 103B(III)(B)(1).

following interviews.

The Exchange proposes to delete the current title and replace it with “Issuer Selection of DMM Unit by Interview” to more specifically delineate the first option.

The Exchange proposes amending subsection (1) of Rule 103B(III)(A), which provides that the issuer shall select a minimum of two DMM units to interview, to require that issuers select a minimum of four DMM units to interview. To effectuate this change, the Exchange would replace “four” with “two” following the phrase “select a minimum of” and before “DMM units to interview.” Requiring issuers to select a minimum of four DMM units to interview would provide additional eligible DMM units with an opportunity to participate in the allocation process, which will lead to an increase in competition without being overly burdensome on the issuer. The Exchange believes that the increase in competition would provide DMM units with a greater incentive to perform optimally. The proposed change would also provide the issuer with more choice in the selection of its assigned DMM unit.

The Exchange also proposes a non-substantive change to Rule 103B(III)(A)(1) to replace “shall” with “must” before “select.”

Further, the Exchange proposes amending the first sentence of Rule 103B(III)(A)(2)(b), which provides that issuers meet with DMM units within five business days after the issuer select the DMM units, to add the word “eligible” before “DMM units.”

The Exchange also proposes amending the second sentence of Rule 103B(III)(A)(2)(b), which provides that at least one representative of the listing company must be a senior official of the rank of Corporate Secretary or higher. The Exchange

proposes to provide senior officials at the issuer with the option to designate an individual to participate in the meeting on their behalf by adding the clause “or a designee of such senior official” at the end of the second sentence of the Rule. The Exchange believes that the proposed change would enable issuers to more efficiently manage the interview process and prevent scheduling conflicts among its most senior executives from unduly delaying the interviews.

Current Rule 103B(A)(2)(b) further provides that no more than three representatives of each DMM unit may participate in the meeting, each of whom must be employees of the DMM unit. The Exchange proposes to eliminate the cap on the number of DMM representatives that can participate in issuer interviews by deleting the phrase “No more than three” before “representatives of each DMM unit” and capitalize the “r”. The Exchange believes that the current cap on number of representatives from the DMM unit limits the ability of a DMM unit to assess who may be best suited to attend an interview with an issuer. The Exchange further believes that providing DMM units with greater flexibility in determining how many people to bring to an interview would enable the DMMs to make that determination as necessary.

The Exchange also proposes to make participation by representatives of the DMM units mandatory by deleting “may” before “participate in the meeting” and replacing it with “must.”

In addition, the Exchange proposes to specify that employees of a member organization operating a DMM unit are permitted to attend allocation interviews by adding “member organization operating a” before “DMM unit.” Under Exchange Rules, a “DMM unit” can be operated as either a stand-alone member organization or as a

trading unit within a member organization.⁸ The proposed change would enable senior management of a broker-dealer operating a DMM unit to be eligible to participate in allocation interviews.

Finally, the Exchange proposes to delete the heading of Rule 103B(III)(A)(3), which is currently “Issuer’s Selection of DMM Unit,” and subpart (a). The text of current Rule 103B(III)(A)(3)(a) would become the text of new Rule 103(III)(A)(3) and would be amended to replace references to “shall” with “will” in two places and “shall then” with “will” in another.

Rule 103B(III)(B) – Exchange Selection of DMM Unit by Delegation

Rule 103B(III)(B) is currently titled “DMM Unit Selected by the Exchange” and sets forth the second allocation option, which is selection of a DMM unit by the Exchange by delegation from the issuer.

The Exchange proposes to delete the current title and replace it with “Exchange Selection of DMM Unit by Delegation” to more accurately delineate the second option. As discussed below, the Exchange proposes various changes to Rule 103B(III)(B) to further delineate selection of a DMM unit based on delegated authority from the issuer and distinguish it from direct issuer selections under Rule 103B(III)(A).

The Exchange proposes to amend subsection (B)(1) to remove the clause providing that ESP selection of a DMM unit be “based on a review of all information available to the issuer.” The proposed change would enable the ESP to consider confidential statistical or market quality data for each eligible DMM unit that is only available to the Exchange. The Exchange believes that enabling the ESP, which as

⁸ See Rules 2(j) – Equities and 98(b)(1) – Equities.

discussed below would be composed of Exchange staff only, to consider such information in its selection of a DMM unit on behalf of an issuer would facilitate more informed and objective decisions and would expedite the allocation, and ultimately the trading, of securities on the Exchange.

Relatedly, the Exchange proposes to reduce the size of the ESP to three Exchange employees designated by the Chief Executive Officer in order to streamline the ESP selection process and the operations of the ESP itself. The Exchange believes that limiting the ESP to Exchange employees would be appropriate given that the ESP would have access to highly confidential statistical or market quality data about DMM firms that would be inappropriate to share with non-Exchange employees.

Further, the second paragraph of current Rule 103B(III)(B)(1) would become Rule 103B(III)(B)(2). The Exchange proposes to specify in this provision that the ESP would select the DMM unit and remove the clause providing that the ESP select the DMM unit “pursuant to the provisions of 103B(III)(A) above” as unnecessary.

The second paragraph of current Rule 103B(III)(B)(1) would become Rule 103B(III)(B)(3). The Exchange proposes to remove the clause providing that tie votes are decided by the CEO of the Exchange or his or her designee as unnecessary given that the proposed three-person ESP could not deadlock. The Exchange also proposes non-substantive changes to the remainder of this paragraph to clarify that selection of the ESP selects the DMM unit and to replace “shall” with “will” in three places.

Current Rule 103B(III)(B)(2), governing the DMM one-year obligation, would become Rule 103B(III)(C). The first sentence would be deleted as unnecessary in order to streamline the Rule. The text of the Rule would also be amended to replace “shall be”

with “with” before “required.”

Finally, current Rule 103B(III)(B)(3), governing foreign listing considerations, would become Rule 103B(III)(D).

Rule 103B(VI) – Policy Notes

The Exchange proposes the following changes to Rule 103B(VI).

First, Rule 103B(VI)(F) (Allocation of Group of Closed-End Management Investment Companies) would be amended to specify that an issuer listing additional funds within nine months from the initial listing may select a different DMM unit from the group of eligible DMM units that the issuer interviewed or reviewed in the allocation process. The current Rule only references DMM units that the issuer has “interviewed.” Including “or reviewed” in the proposed Rule would explicitly cover allocations made by delegation to the Exchange under option two where an issuer reviewed but may not have formally interviewed a DMM unit.

Second, Rule 103B(VI)(G) (Allocation Freeze Policy) would be amended to remove outdated references to Exchange Rules 475 or 476, which have been replaced by the Rule 8000 and 9000 Series references in the Rule. Further, the Exchange proposes to replace the two outdated references to “specialty stock” with “DMM security.”⁹

Finally, the Exchange proposes to amend Rule 103B(VI)(H) (Allocation Sunset Policy) to extend the period an allocation decision remains binding on an IPO listing from twelve to eighteen months of such decision. The proposed change would provide listing issuers with greater flexibility when an IPO is postponed before being referred for

⁹ As defined in Rule 98(b)(2) – Equities, the term “DMM securities” means any securities allocated to the DMM unit pursuant to Rule 103B or other applicable rules.

allocation through the allocation process pursuant to NYSE MKT Rule 103B (III).

The Exchange also proposes to amend the Rule to cover the contingency where the individual DMM selected by an issuer to trade its securities is no longer with the selected DMM unit during the period that allocation decisions remain effective. The Exchange proposes to permit a company in that circumstance to choose whether to stay with the selected DMM unit or be referred to allocation. Further, the Exchange proposes to provide the company with the choice of interviewing a replacement DMM from that DMM unit prior to deciding whether to stay with the selected DMM unit or be referred to allocation. Finally, the Exchange proposes to replace one reference to “shall” in the last sentence of the Rule with “will.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, as follows.

The Exchange believes that the proposed amendments to Rule 103B(III)(A)(1) to provide that issuers interview four DMMs rather than two would promote just and equitable principles of trade because increasing the number of DMMs participating in the issuer allocation process would increase competition to provide services to issuers, and

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

will provide the issuer with more choice in the selection of its DMM. Additionally, the Exchange believes that the proposal is designed to remove impediments to, and perfect the mechanism of a free and open market and a national market system, because it would lead to increased competition without being overly burdensome on issuers and would provide issuers with greater choice in the selection of a DMM unit. The Exchange believes that the increase in competition would also provide DMM units with a greater incentive to perform optimally.

The Exchange believes that the proposed amendments to Rule 103B(III)(A)(2)(b) to permit senior officials at issuers to designate a representative to attend DMM interviews would remove impediments to, and perfect the mechanism of a free and open market, by allowing issuers to more efficiently manage the interview process and prevent scheduling conflicts from unduly delaying interviews and the assignment of securities to DMM units, which ultimately facilitates the fair and orderly trading in the subject security.

The Exchange believes that the additional proposed amendments to Rule 103B(III)(A)(2)(b) to eliminate the cap on the number of DMM representatives that can participate in issuer interviews, making participation by representatives of the DMM units in such interviews mandatory, and permitting employees of a member organization operating a DMM to attend allocation interviews, is designed to remove impediments to, and perfect the mechanism of a free and open market, because it would give issuers greater exposure to management and other staff at the proposed DMM units and provide them with more information about the firms during the interview, thus enhancing the value of the interviews for issuers and facilitating their choice of DMM.

The Exchange believes that the proposed amendments to Rule 103B(III)(B)(1) to remove the requirement that the ESP base its review on information available to the issuer would remove impediments to, and perfect the mechanism of a free and open market, by enabling the ESP consider confidential statistical or market quality data for each eligible DMM unit that is only available to the Exchange, thereby facilitating more informed and objective decisions by the ESPs on behalf of issuers. Similarly, the Exchange believes that the proposed amendments to Rule 103B(III)(B)(1) reducing the size of the ESP to three Exchange employees designated by the Chief Executive Officer would streamline and facilitate the process of assigning securities to DMM units by allowing for more flexibility in composing the ESP, which ultimately facilitates and expedites the allocation and ultimately the trading of securities on the Exchange.

The Exchange believes that the amendments to Rule 103B(VI)(H) extending the sunset period from twelve to eighteen months will foster cooperation and coordination with person engaged in facilitating securities transactions and will remove impediments to a free and open market because it recognizes that all IPOs may not be brought to market in a twelve month period and avoids repeating administrative steps in the listing process, thereby promoting efficient use of the Exchange's resources. The proposed rule change also remove impediments to, and perfect the mechanism of a free and open market, by providing issuers with a greater opportunity for input in the allocation process.

Finally, the Exchange's proposal to make various technical, non-substantive changes to the text of Rules 103B(III) and (VI) – renaming headings and section renumbering, replacing “shall” with “will,” deleting redundant and unnecessary clauses, adding clarifying text and updated references, and replacing outdated references – adds

clarity and transparency to the Exchange's Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would increase competition among DMM units by allowing more DMM units to participate in the interview process and provide DMM units with a greater incentive to perform optimally potentially and enhance the quality of the services DMMs provide to issuers. Further, the Exchange believes that the proposed changes would not be burdensome to issuers. Further, even assuming an increase in the burden on issuers during the allocation process resulting from the proposed changes, the Exchange believes that any such increased burden will be small relative to the benefits that additional competition between DMM units may provide. Issuers could, moreover, permit the Exchange to select the DMM unit pursuant to the process found in NYSE MKT Rule 103B(III)(B).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) Rule 19b-4 thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow it to promptly harmonize its rule with recently adopted changes to NYSE Rule 103B. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

because it will allow the Exchange to harmonize its rules, without undue delay, with both NYSE Rule 103B and Exchange Rule 7.25E,¹⁸ which should help to alleviate potential confusion. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁹

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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2017-27 on the subject line.

¹⁸ See supra note 4 and accompanying text.

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2017-27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEMKT-2017-27 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).

