

# Information Memo

NYSE Regulation, Inc

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Number 12-6  
January 31, 2012

**TO:** ALL MEMBERS AND MEMBER ORGANIZATIONS

**SUBJECT:** RULE 103B AMENDMENTS EFFECTIVE JANUARY 16, 2012

## I. Overview

The New York Stock Exchange LLC (“NYSE”) and NYSE Amex, LLC (“NYSE Amex”, together with NYSE, the “Exchange”) have filed with the Securities and Exchange Commission rule proposals to amend Exchange Rule 103B in the following manner:

- Extend the Allocation Sunset Policy from six months to 12 months;
- Permit an issuer to submit a written letter to an Exchange Selection Panel (“ESP”) expressing a preference for a Designated Market Maker (“DMM”) if the issuer has delegated authority to the Exchange to select the DMM unit; and
- Align the quiet period for issuer contact with DMM units or the ESP.

The effective date of these rule changes is **January 16, 2012**.<sup>1</sup> A copy of the rule text, as amended, is attached.

## II. Description of Rule Changes

### A. Allocation Sunset Policy Extended to 12 Months

Exchange Rule 103B(VI)(H), the Allocation Sunset Policy, sets forth how long allocation decisions remain effective with respect to any initial public offering listing company that lists on the Exchange. Because allocation decisions are generally made prior to the date of an initial public offering, the Allocation Sunset Policy provides for a period for DMM allocation decisions to remain effective pending the initial public offering. Currently, allocation decisions remain effective for six months. With the rule change, allocation decisions will remain effective for 12 months.

### B. Issuer Written Preference Submission

Exchange Rule 103B(III) provides issuers with the choice either to select its DMM unit directly or

<sup>1</sup> See Securities Exchange Act Release Nos. 66047 (Dec. 23, 2012), 76 FR 82339 (Dec. 30, 2011) (SR-NYSE-2011-64) and 66044 (Dec. 23, 2011), 76 FR 82344 (Dec. 30, 2011) (SR-NYSEAmex-2011-100).

to delegate the authority to the Exchange to select its DMM unit. When authority has been delegated 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 Exchange has amended Rule 103B(III)(1) to provide that when an issuer delegates authority to the Exchange to select its DMM unit, the ESP may consider written submissions from the issuer that express the issuer's preference. Such issuer written submissions are not required and would be non-binding on the ESP.

If an issuer chooses to submit a written preference submission, such submission should provide supporting justification for why an issuer prefers a particular DMM unit. Among other things, the issuer should include information about the due diligence that was conducted as part of the issuer's preference for a particular DMM unit. Factors that the ESP will take into consideration when reviewing a preference submission include the number of DMM units that the issuer considered (generally, a minimum of three DMM units should be reviewed), and the extent of the due diligence conducted of each DMM unit (i.e., which representatives from the DMM units, if any, that the issuer has met with and whether the issuer has reviewed written materials from the DMM unit, and if so, what type of materials).

The Exchange also amended Rule 103B(III)(B)(1) to provide that the ESP may choose to interview one or more individuals associated with the DMM unit. The Exchange also removed the reference to non-DMM Executive Floor Governors as such reference is redundant of the requirement that the ESP include three non-DMM Executive Floor Governors or Floor Governors.

#### C. Quiet Periods Aligned

Exchange Rule 103B(III) currently provides for a "quiet period" during which the DMM unit may not have contact with the issuer or ESP. The rule previously separated the description of the quiet periods in Rule 103B(III)(A)(2) for when the issuer selects the DMM unit and 103B(III)(B)(1) for when authority has been delegated to the Exchange to select the DMM unit. To make the quiet periods more consistent regardless of the issuer's election, the Exchange amended Rule 103B(III) to provide that after the Exchange provides written notice to the DMM units that the issuer is listing on the Exchange, no individual associated with a DMM unit may contact the issuer, or the ESP if applicable, until the allocation is made, except as otherwise provided for in the rule (e.g., as permitted during the interview).

### III. **Staff Contacts**

Questions regarding the allocation process may be addressed to the following:

- David Ethridge, Senior Vice President, Global Listings, 212.656.2419;
- Frank DeGarcia, Vice President, Operations, 212.656.6852; or
- Lydia Offord, Global Listings, 212.656.4603; or

Questions regarding the NYSE and NYSE Amex Equities Rules cited in this notice may be addressed to:

- Clare Saperstein, Vice President, NYSE Regulation, Inc., 212.656.2355; or
- David De Gregorio, Chief Counsel, NYSE Regulation, Inc., 212.656.4166.

Attachment

Additions to rule text underlined

Deletions to rule text [bracketed]

## Rule 103B. Security Allocation and Reallocation

(I)-(II) No change

### (III) ALLOCATION

The issuer may select its DMM unit directly or delegate the authority to the Exchange to select its DMM unit. After the Exchange provides written notice to DMM units that the issuer is listing on the Exchange, no individual associated with a DMM unit may contact such issuer, or the Exchange Selection Panel if applicable, until the allocation is made, except as otherwise provided below.

#### (A) DMM Unit Selected by the Issuer

(1) No change

(2) [DMM units, or any individuals acting on their behalf, may not have any contact with any listing company once the Exchange provides written notice to DMM units that the listing company is listing on the Exchange].

[(3)] Interview Between the Issuer and DMM Units

(a)-(d) No change

[(4)] (3) Issuer's Selection of DMM Unit

(a) No change

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#### (B) DMM Unit Selected by the Exchange

(1) If the issuer delegates authority to the Exchange to select its DMM unit, an Exchange Selection Panel ("ESP") shall be convened to select a DMM unit based on a review of all information available to the issuer. The ESP shall consist of: (a) at least one member of the Exchange's Senior Management, as designated by the Chief Executive Officer ("CEO") of the Exchange or his or her designee, (b) 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 (c) [any combination of] three [non-DMM Executive Floor Governors ( "EFGs") or] non-DMM Floor Governors for a total of six members. Such issuer may choose to submit a letter to the ESP indicating its preference and supporting justification for a particular DMM unit. The ESP may consider such letter in performing its duty to select a DMM unit for the issuer.

The Exchange Selection Panel shall select the DMM unit pursuant to the provisions of 103B(III)(A) above and inform the issuer of its selection. The ESP may also interview one or more individuals associated with a DMM unit. [Individuals associated with the DMM units may not communicate about the DMM unit selection process with members

of the ESP from the time the issuer delegates the assignment responsibility to the Exchange until the ESP announces its assignment decision.]

The selection of the DMM unit shall be made by majority vote with any tie votes being decided by the CEO of the Exchange or his or her designee. The Exchange shall notify the DMM unit and the issuer. The DMM unit shall then be responsible for providing the issuer with the name of the DMM with the requisite experience and skill it believes is appropriate to trade the issuer's security.

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## **VI. POLICY NOTES**

(A)-(G) No change

### **(H) Allocation Sunset Policy**

Allocation decisions shall remain effective with respect to any initial public offering listing company which lists on the Exchange within [six] twelve months of such decision. In situations in which the selected DMM unit merges or is involved in a combination within the [six] twelve-month period, the company may choose whether to stay with the selected DMM unit, or be referred to allocation. If a listing company does not list within [six] twelve months, the matter shall be referred for allocation through the allocation process pursuant to NYSE Rule 103B, Section III.

(I) No change

(VII)-(IX) No change

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