

Required fields are shown with yellow backgrounds and asterisks.

Filing by NYSE MKT LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposes rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar the Exchange new trading technology platform

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Clare	Last Name * Saperstein
Title * Associate General Counsel NYSE Group Inc	
E-mail * Clare.Saperstein@theice.com	
Telephone * (212) 656-2355	Fax (212) 656-8101

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 01/25/2017	Assistant Secretary
By Martha Redding	<div style="border: 1px solid black; width: 100%; height: 30px;"></div>
(Name *)	

Martha Redding, mredding@nyx.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar, the Exchange’s new trading technology platform.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Clare F. Saperstein  
Associate General Counsel  
NYSE Group, Inc.  
(212) 656-2355

David De Gregorio  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-4166

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) Purpose

With Pillar, the Exchange proposes to transition its cash equities trading platform from a Floor-based market with a parity allocation model to a fully automated price-time priority allocation model. The Exchange will be filing several proposed rule changes to support the NYSE MKT cash equities implementation

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

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

of Pillar. The Exchange has already adopted the rule numbering framework of the NYSE Arca Equities, Inc. (“NYSE Arca Equities”) rules for Exchange cash equities trading on the Pillar trading platform.<sup>3</sup> As described in the Framework Filing, the Exchange denoted the rules applicable to cash equities trading on Pillar with the letter “E” to distinguish such rules from current Exchange rules with the same numbering. In addition, the Exchange filed a proposed rule change to support Exchange trading of securities listed on New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., and other exchanges on an unlisted trading privileges basis, including Exchange Traded Products listed on other exchanges.<sup>4</sup> The Exchange has also proposed rules based on the rules of NYSE Arca Equities to support the transition of Exchange trading to a fully automated price-time priority allocation model.<sup>5</sup>

In this filing, the Exchange proposes rules governing market makers on the Exchange following the transition to Pillar. Specifically, for all securities that would trade on the Exchange, including UTP Securities,<sup>6</sup> an ETP Holder<sup>7</sup> could register as a Market Maker<sup>8</sup> and be subject to obligations similar to the obligations of a Market Maker on NYSE Arca Equities.<sup>9</sup> The Exchange proposes that the following rules, based on NYSE Arca Equities rules of the same number with non-substantive differences, would govern Market Makers on the Pillar trading platform:

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<sup>3</sup> See Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the “Framework Filing”).

<sup>4</sup> See Securities Exchange Act Release No. 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR-NYSEMKT-2016-103) (Notice) (the “ETP Listing Rules Filing”).

<sup>5</sup> See SR-NYSEMKT-2017-1 (“Trading Rules Filing”).

<sup>6</sup> The term “UTP Security” is defined in Rule 1.1E(ii) to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges.

<sup>7</sup> In the Trading Rules Filing, the Exchange proposes to define the term “ETP Holder” in Rule 1.1E(n) as a member organization that has been issued an Equity Trading Permit. The term “member organization” is defined in Rule 2(b) – Equities.

<sup>8</sup> As described below, the Exchange proposes to define the term “Market Maker” in Rule 1.1E(v).

<sup>9</sup> On NYSE Arca Equities, the term “Market Maker” is defined in NYSE Arca Equities Rule 1.1(v).

- proposed Rule 1.1E(v) (definition of Market Maker);
- proposed Rule 1.1E(w) (definition of Market Maker Authorized Trader);
- proposed Rule 7.20E (Registration of Market Makers);
- proposed Rule 7.21E (Obligations of Market Maker Authorized Traders);
- proposed Rule 7.22E (Registration of non-DMM Market Makers in a Security); and
- proposed Rule 7.23E (Obligations of Market Makers).

In addition, the Exchange proposes to require that a Designated Market Maker (“DMM”) be registered in each Exchange-listed security, which is based on current rules. As proposed, Exchange DMMs would be required to meet all of the proposed obligations for Market Makers, and would be subject to rules-based heightened quoting obligations in their assigned securities.

Unlike Exchange DMMs under current rules, which are Floor-based individuals who operate within a DMM unit of a member organization,<sup>10</sup> the proposed rules for DMMs would provide for electronic access only, would not assign securities at the natural person level, and would not require DMMs to facilitate the opening, reopening, or closing of assigned Exchange-listed securities. In addition, the proposed rules would not entitle DMMs to a parity allocation of executions, and also would not subject DMMs to heightened capital requirements. Finally, DMMs would continue to be subject to rules governing allocation of securities and combination of DMM units that are based on current rules.

The Exchange proposes the following rules, which are based on both NYSE Arca Equities rules and current Exchange rules, to establish the requirements for DMMs on the Pillar trading platform.

- proposed Rule 1.1E(ccc) (definition of DMM);
- proposed Rule 7.24E (Registration and Obligation of DMMs);
- proposed Rule 7.25E (DMM Security Allocation and Reallocation); and
- proposed Rule 7.26E (DMM Combination Review Policy).

Subject to rule approvals for the ETP Listing Rule Filing, Trading Rules Filing, and this filing, the Exchange will announce the transition of its cash equities trading to the Pillar trading system by Trader Update, which the Exchange

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<sup>10</sup> See Rule 2(i) – Equities (defining the term “DMM” to mean an individual member, officer, partner, employee, or associated person of a DMM unit who is approved by the Exchange to act in the capacity as a DMM) and Rule 98(b)(1) – Equities (defining a “DMM unit” as a trading unit within a member organization that is approved pursuant to Rule 103 – Equities to act as a DMM unit).

anticipates will be in the second quarter of 2017.

Because the Exchange would not be trading on both its current Floor-based trading platform and the Pillar trading platform at the same time, once trading on the Pillar trading platform begins, specified current Exchange equities trading rules would no longer be applicable. Accordingly, as described in more detail below, for each current equities rule that would no longer be applicable when trading on the Pillar trading platform begins, the Exchange proposes to state in a preamble to such rule that “this rule is not applicable to trading on the Pillar trading platform.” Once the Exchange has transitioned to the Pillar trading platform, the Exchange will file a separate proposed rule change to delete those current rules that have been identified in this filing as not being applicable to trading on Pillar. Current Exchange rules governing equities trading that do not have this preamble will continue to govern Exchange operations on its cash equities trading platform.

### Proposed Rule Changes

As noted above, the Exchange proposes rules for Market Makers that would be applicable to cash equities trading on Pillar that are based on NYSE Arca Equities Rules. Throughout these proposed rules, the Exchange proposes non-substantive differences as compared to the NYSE Arca Equities rules to use the term “Exchange” instead of the terms “NYSE Arca Marketplace,” “NYSE Arca,” or “Corporation”; use the term “Exchange Book” instead of “NYSE Arca Book”; use the term “will” instead of “shall”; and use the terms “mean” or “have the meaning” instead of the terms “shall mean” or “shall have the meaning.”<sup>11</sup> The Exchange proposes that rules governing Market Makers on the Pillar trading platform would be set forth in Rules 1.1E (Definitions) and Section 2 (Market Makers) of Rule 7E – Equities Trading.

### Rule 1E

As described in the Framework Filing, Rule 1E specifies definitions that are applicable to trading on the Pillar trading platform. The Exchange proposes the text for following existing definitions that are marked “Reserved”:

- The Exchange proposes to amend Rule 1.1E(v) to delete the term “Reserved” and define the term “Market Maker” as the ETP Holder that acts as a Market Maker pursuant to Rule 7E. This proposed rule is based on NYSE Arca Equities Rule 1.1(v), which defines the term “Market Maker,” without any substantive differences.

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<sup>11</sup> Because these non-substantive differences would be applied throughout the proposed rules, the Exchange will not note these differences separately for each proposed rule.

- The Exchange proposes to amend Rule 1.1E(w) to delete the term “Reserved” and define the term “Market Maker Authorized Trader” or “MMAT” to mean an Authorized Trader<sup>12</sup> who performs market making activities pursuant to Rule 7E on behalf of a Market Maker. This proposed rule is based on NYSE Arca Equities Rule 1.1(w), which defines the term “Market Maker Authorized Trader,” without any substantive differences.
- The Exchange proposes to amend Rule 1.1E(ccc) to delete the term “Reserved” and define the term “Designated Market Maker” and “DMM” to mean a registered Market Maker that is subject to additional requirements set forth in Section 2 of Rule 7E for Exchange-listed securities assigned to such DMM. This proposed definition would be new and is not based on the rules of NYSE Arca Equities. Because DMMs would be Market Makers, and a Market Maker designation is at the ETP Holder level, this proposed definition would differ from current rules, which define a DMM at the individual level.<sup>13</sup>

#### Rule 7.20E

The Exchange proposes to amend Rule 7.20E to delete the term “Reserved” and re-name it “Registration of Market Makers.” Because the Exchange would operate as a fully-automated market, the Exchange proposes that Market Makers on its Pillar cash equities trading platform would have the same registration requirement as market makers on NYSE Arca Equities. Accordingly, the Exchange proposes Rule 7.20E based on NYSE Arca Equities Rule 7.20 without substantive differences.

Proposed Rule 7.20E is based on NYSE Arca Equities Rule 7.20 with specified differences.

- First, because the Exchange already has member organizations that are registered as market makers, the Exchange proposes that such member organizations would continue to be registered as Market Makers under proposed Rule 7.20E without being required to re-register as a Market Maker.<sup>14</sup> The Exchange therefore proposes to

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<sup>12</sup> In the Trading Rules Filing, supra note 5, the Exchange proposes to define the term “Authorized Trader” in Rule 1.1E(g).

<sup>13</sup> See Rule 2(i) – Equities, supra note 10.

<sup>14</sup> Under current Rule 103 – Equities, a member organization may be approved to be registered as a DMM. In addition, under current Rule 107B – Equities, a member

specify in Rule 7.20E(a)(i) that no ETP Holder would act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Exchange pursuant to Rule 7.20E or is a member organization registered as a DMM or SLMM under Exchange rules as of one business day before the Pillar transition date.<sup>15</sup> Accordingly, a member organization registered as either a DMM or SLMM on a specified date close to the transition of trading to Pillar would be deemed registered as a Market Maker on the Exchange pursuant to proposed Rule 7.20E and would not need to re-apply for Market Maker status.

- Second, proposed Rule 7.20E(b) is based on NYSE Arca Equities Rule 7.20(b) with the following change to the second sentence so that it would provide that “[a]pplications will be reviewed by the Exchange, which will consider the ETP Holder’s capital, operations, personnel, technical resources, and disciplinary history.” The Exchange also proposes an additional clarifying sentence that is not in NYSE Arca Equities Rule 7.20(b) that would provide that after reviewing the application, the Exchange would either approve or disapprove the ETP Holder’s registration as a Market Maker. These proposed differences compared to NYSE Arca Equities Rule 7.20 do not result in any substantive differences.
- Third, the Exchange proposes that DMMs would not be covered by the provisions of proposed Rule 7.20E(e), which governs a Market Maker’s withdrawal of registration as a Market Maker in a security. As described in greater detail below, the Exchange proposes to address DMM withdrawal from registration in a security in proposed Rule 7.24E(a)(4). The Exchange also proposes a substantive difference to proposed Rule 7.20E(e) to provide that a Market Maker that fails to notify the Exchange of its written notice of withdrawal on the business day prior to such withdrawal may be subject to formal disciplinary action. The Exchange does not believe that a Market Maker needs to provide ten business day’s notice of such withdrawal of registration, as required by NYSE Arca Equities Rule 7.20(e), because the Exchange can process such withdrawals with only one business

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organization approved as a Supplemental Liquidity Provider may be registered as a market maker on the Exchange as an “SLMM”.

<sup>15</sup> As described *infra*, the Pillar implementation date is subject to approval of the Trading Rules Filing, ETP Listing Rules Filing, and this filing, and will announce the implementation date by Trader Update. Once announced, the Exchange will update the rule text with the implementation date.



day's notice.

- Finally, the Exchange proposes a non-substantive difference to proposed Rule 7.20E(c) and (e) as compared to NYSE Arca Equities Rule 7.20(c) and (d) to use Exchange disciplinary rule references in lieu of NYSE Arca Equities disciplinary rule references.

#### Rule 7.21E

The Exchange proposes to amend Rule 7.21E to delete the term “Reserved” and re-name it “Obligations of Market Maker Authorized Traders.” Proposed Rule 7.21E would set forth the requirement that MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. The proposed rule would also specify the registration requirements for MMAT and the procedures for suspension and withdrawal of registration. This proposed rule is based on NYSE Arca Equities Rule 7.21 without any substantive differences.

#### Rule 7.22E

The Exchange proposes to amend Rule 7.22E to delete the term “Reserved” and re-name it “Registration of Non-DMM Market Makers in a Security.” Proposed Rule 7.22E would set forth the process for Market Makers, other than DMMs, to become registered in a security and the factors the Exchange may consider in approving the registration of a Market Maker in a security. The proposed Rule would also describe both termination of a Market Maker’s registration in a security by the Exchange and voluntary termination by a Market Maker.

Proposed Rule 7.22E is based on NYSE Arca Equities Rule 7.22 with the following differences:

- First, because DMM registration in a security would be governed by proposed Rule 7.25E, the Exchange proposes that not all Market Makers would register in a security pursuant to the requirements in proposed Rule 7.22E. Instead, proposed Rule 7.22E would govern only registration in a security for non-DMM Market Makers.
- Second, in proposed Rule 7.22E(a), the Exchange proposes that a Market Maker may become registered in a security by submitting a request to the Exchange rather than the text in NYSE Arca Equities Rule 7.22, which provides that a prospective Market Maker should file a security registration form. The Exchange believes the proposed text provides flexibility regarding the manner that the Exchange would accept such requests, including electronically, and is not a substantive difference.

- Third, the Exchange proposes a substantive difference compared to NYSE Arca Equities Rule 7.22 because it does not propose rule text based on paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22. Those NYSE Arca Equities rules govern designated market makers and lead market makers on NYSE Arca Equities. Because the Exchange is not proposing to have Market Makers with the same obligations as NYSE Arca Equities designated market makers and lead market makers, the Exchange is not including in proposed Rule 7.22E the text from paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22. The Exchange proposes that requirements relating to DMMs would be set forth in proposed Rules 7.24E, 7.25E, and 7.26E, described in greater detail below.
- Finally, the Exchange proposes additional, non-substantive differences by replacing references to NYSE Arca Equities Rule 10 and 10.13 with references to the Rule 9200 and Rule 9500 Series, respectively.

#### Rule 7.23E

The Exchange proposes to amend Rule 7.23E to delete the term “Reserved” and re-name it “Obligations of Market Makers.” Proposed Rule 7.23E would set forth the obligation of all Market Makers, including DMMs, to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange and would delineate the specific responsibilities and duties of Market Makers, including the obligation to maintain continuous, two-sided trading in registered securities and certain pricing obligations Market Makers are required to adhere to.

Proposed Rule 7.23E is based on NYSE Arca Equities Rule 7.23 with the following differences:

- First, proposed Rules 7.23E(a)(1)(B)(iii) and (iv) would have updated definitions for the terms “Designated Percentage” and “Defined Limit.” To reflect that the applicable percentages are based on how a security is designated under Regulation NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”), the Exchange proposes to use LULD Plan definitions in proposed Rule 7.23E(a)(1)(B). Using these definitions is based on Bats BZX, Inc. (“Bats”) Rule 11.8(d)(2)(D) and (E), which similarly uses LULD Plan definitions for defining the terms “Designated Percentage” and “Defined Limit.” This proposed difference compared to NYSE Arca Equities Rule 7.23(a)(1)(B)(iii) and (iv) is non-substantive and is meant to be clarifying.

- Second, proposed Rule 7.23E(a)(2) would require that a Market Maker maintain adequate minimum capital in accordance with the provisions of Rule 15c3-1 under the Securities Exchange Act of 1934 (“Rule 15c3-1”), rather than cite to NYSE Arca Equities Rule 4.1. This proposed difference is non-substantive because NYSE Arca Equities Rule 4.1 cross references Rule 15c3-1 and therefore the capital requirements for Market Makers on the Exchange would be identical to the capital requirements for Market Makers on NYSE Arca Equities.
- Finally, the Exchange proposes that the provisions of proposed Rule 7.23E(d), regarding temporary withdrawal of an ETP Holder from Market Maker status in the securities in which it is registered, would not be applicable to Market Makers acting as a DMM. As described in greater detail below, the Exchange proposes to address DMM withdrawal from registration in a security in proposed Rule 7.24E(a)(4).

#### Rule 7.24E

The Exchange proposes to amend Rule 7.24E to delete the term “Reserved” and re-name it “Registration and Obligations of DMMs.” Proposed Rule 7.24E would describe the registration and temporary withdrawal procedures and obligations of DMMs on the Exchange’s Pillar trading platform. Proposed Rule 7.24E is new and is based in part on provisions of current 98A – Equities, Rule 103 – Equities, Rule 104 – Equities, and Rule 107B - Equities.

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

Proposed Rule 7.24E(b) would be titled “Registration” and would require that an ETP Holder be registered as a Market Maker and approved as a DMM to be eligible to receive an allocation as a DMM under proposed Rule 7.25E. This proposed rule text is based in part on current Rule 103(a)(i) – Equities, which provides that no member organization shall act as a DMM unit on the Exchange in any security unless such member organization is registered as a DMM unit in such security with the Exchange and unless the Exchange has approved of the member organization so acting as a DMM unit and has not withdrawn such approval.

Proposed paragraphs (b)(1) – (4) of Rule 7.24E would specify additional requirements relating to registration.

- The Exchange proposes to provide for continuity for its listed companies and provide in proposed Rule 7.24E(b)(1) that a member organization that is approved to operate as a DMM unit under Exchange rules as of one business day before the Pillar transition date would automatically be approved as a DMM under proposed Rule 7.24E. This proposed rule text, together with proposed Rule 7.25E(a)(1), described below, would ensure that DMM units currently assigned to a security would continue to be the assigned DMM in a security when the Exchange transitions to the Pillar trading platform.
- Proposed Rule 7.24E(b)(2) would provide for how a Market Maker that is not currently approved as a DMM may become a DMM. As proposed, Market Makers that are not registered as a DMM as of one business day before the Pillar transition date would be required to file an application in writing in such form as required by the Exchange to be considered eligible to receive an allocation as a DMM. In reviewing the application, the Exchange may consider the Market Maker's market making ability, capital available for market making, and such other factors as the Exchange deems appropriate, including those set forth in proposed Rules 7.25E(f) and 7.26E. After reviewing the application, the Exchange would either approve or disapprove the applicant Market Maker's registration as a DMM. This proposed rule text is based on Rule 103(b)(i) – Equities. The Exchange proposes a substantive difference from current rules to reference proposed Rules 7.25E(f) and 7.26E, described below, which establish additional factors that the Exchange may consider in determining whether to approve a DMM.
- Proposed Rule 7.24E(b)(3) would provide that an ETP Holder registered as a DMM in a security may also be registered as a Market Maker in such security pursuant to Rule 7.22E(a) only if such ETP Holder maintains information barriers between the trading unit operating as a DMM and the trading unit operating as a non-DMM Market Maker in the same security. This proposed rule is based on Rule 107B(h)(2)(A) – Equities, which provides that a DMM unit shall not also act as an SLP in the same securities in which it is registered as a DMM. Because current rules define a DMM unit as a trading unit within a member organization,<sup>16</sup> current Rule 107B(h)(2)(A) – Equities permits a member organization to operate as an SLP in a security that is assigned to a DMM unit provided that such SLP is not part of the DMM unit. Accordingly, proposed Rule 7.24E(b)(3) would operate

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<sup>16</sup>

See Rule 98(b)(1) – Equities.

substantially the same as how a member organization currently may be both a DMM and an SLP in the same security through the use of information barriers.

- Proposed Rule 7.24E(b)(4) would provide that a DMM may apply to withdraw temporarily from its DMM status in one or more assigned securities. Exchange rules currently provide for the temporary reallocation of a security, but the current rule is geared toward Floor-based individuals making the determination to temporarily reassign a security to another DMM.<sup>17</sup> To maintain the current ability to temporarily reassign a security to another DMM for legal or regulatory reasons and also update the rule text to reflect that it would not be a decision made by Floor participants, the Exchange proposes rule text based in part on NYSE Arca Equities Rule 7.23(d) instead of current Rule 103.10 - Equities.

Accordingly, as proposed, the DMM would be required to base its request to temporarily withdraw on demonstrated legal or regulatory requirements that necessitate a temporary withdrawal, or to provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. As further proposed, the Exchange would act promptly on a withdrawal request and, if the request is granted, the Exchange may temporarily reassign the security or securities to another DMM. As proposed, Rule 7.24E(b)(4) would further provide that the DMM temporarily assigned a security or securities would be subject to the obligations set forth in paragraph (b) of proposed Rule 7.24E, described below, when acting as a temporary DMM in such security or securities. By requiring a legal or regulatory basis for requesting a temporary withdrawal in registration in a security, the Exchange believes the proposed rule would have the same effect as current Rule 103.10 – Equities, which requires that the determination to temporarily reallocate securities be made for the public interest.

- Proposed Rule 7.24E(b)(5) would provide that a DMM may not be registered in a security of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the

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<sup>17</sup> See Rule 103.10 – Equities (providing that the Chief Regulatory Officer or his or her designee and two non-DMM Executive Floor Governors or if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors, shall have the power to reallocate temporarily any security on an emergency basis to another location on the Exchange whenever in their opinion such reallocation would be in the public interest).

DMM. This proposed rule text is based on current Rule 98A – Equities, with non-substantive differences to use Pillar terminology. The Exchange proposes that Rule 98A – Equities would not be applicable to trading on the Pillar trading platform.

The Exchange proposes that Rule 103 – Equities would not be applicable to trading on the Pillar trading platform. Instead, proposed Rule 7.24(b), together with proposed Rule 7.20E, described above, would establish the registration requirements for DMMs.

Proposed Rule 7.24E(c) would describe the obligations of DMMs on the Pillar Trading Platform. Specifically, in addition to meeting the Market Maker obligations set forth in Rule 7.23E, DMMs would be required to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 25% of the day as measured across all Exchange-listed securities that have been assigned to the DMM. Proposed Rule 7.24E(c) would provide that time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. In other words, this would be a portfolio-based quoting requirement. Orders entered by the DMM that are not displayed would not be included in the inside quote calculation.

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

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

#### Rule 7.25E

The Exchange proposes new Rule 7.25E titled “DMM Security Allocation and Reallocation” to set forth the allocation and reallocation of securities to DMMs following the transition to Pillar. The proposed Rule is based on current Rule 103B – Equities with substantive differences to reflect that an allocation would be

to a DMM at the ETP Holder level rather than at the individual DMM level and non-substantive differences to streamline the rule text. In addition, the Exchange would use the term “DMM,” as defined in proposed Rule 1.1E(ccc) to replace current references to either DMM (as an individual) or DMM unit. Because proposed Rule 7.25E would establish the requirements for the allocation and reallocation of securities to DMMs on Pillar, the Exchange proposes that Rule 103B – Equities would not be applicable to trading on the Pillar trading platform.

Proposed Rule 7.25E(a) would set forth the criteria for ETP Holders registered as DMMs to be eligible for allocation and reallocation of securities.

- Proposed Rule 7.25E(a)(1) would provide that a security listed on the Exchange as of one business day before the Pillar transition date would continue to be allocated to the member organization registered as a DMM in such security, unless reallocated under paragraph (c) of the proposed Rule, described below. This proposed rule, together with proposed Rule 7.24E(b)(1), described above, would ensure continuity for Exchange-listed companies to stay with the same DMM after the Exchange transitions to Pillar. To reflect that an allocation decision under current Rule 103B – Equities may occur after the transition date (e.g., the allocation process began before the Pillar transition date), the Exchange proposes to further provide that any allocation decisions made under Rule 103B – Equities after one business day before the Pillar transition date would be deemed an allocation under proposed Rule 7.25E(b), described in greater detail below.
- Proposed Rule 7.25E(a)(2) would provide that a security would be allocated to a DMM when such security (A) is initially listed on the Exchange; and (B) must be reassigned under either this Rule or the Exchange’s Company Guide. This proposed rule text is based on current Rule 103B(I) – Equities with non-substantive differences to use Pillar terminology.
- Proposed Rule 7.25E(a)(3) would provide that a DMM’s eligibility to participate in the allocation process would be determined at the time the interview is scheduled by the Exchange. This proposed rule text is based on current Rule 103B(II)(I) - Equities with non-substantive differences to use Pillar terminology.
- Proposed Rule 7.25E(a)(4) would provide that DMMs would be eligible to participate in the allocation process of a listed security if the DMM meets the quoting requirements specified in proposed Rule 7.24E(c), which the Exchange proposes to define as “DMM obligations.” Rule 7.25E(a)(4) is based on current Rule 103B(II)(A) – Equities with non-substantive differences to cross

reference proposed DMM obligations.<sup>18</sup>

Proposed Rules 7.24E(a)(4)(A) – (D) would describe the consequences for a DMM’s failure to meet DMM obligations. These proposed rules are based on current Rule 103B(II)(J)(1) – (4) - Equities with differences to cross reference the proposed DMM obligations rather than current quoting requirements.

Proposed Rule 7.25E(b) would describe the allocation process, which would operate similarly to the allocation process as currently set forth in Rule 103B(III) – Equities. Under the proposed Rule, issuers would have the option to select its DMM directly following the procedures set forth in proposed Rule 7.25E(b)(1), which is based on current Rule 103B(III)(A) - Equities with one substantive difference, or delegate the authority to the Exchange to select its DMM as described in proposed Rule 7.25E(b)(2), which is based on current Rule 103B(III)(B) - Equities.

The Exchange proposes a substantive difference for proposed Rule 7.25E(b)(1)(A) as compared to current Rule 103B(III)(A)(1) – Equities in that an issuer would be required to select a minimum of four DMMs to interview rather than a minimum of two DMMs to interview. By increasing the minimum number of DMMs that must be interviewed, a larger number of DMMs would have an opportunity to participate in the allocation process, which would lead to an increase in competition without being overly burdensome on the issuer. The increase in number of DMMs to interview would also provide the issuer with more choice in the selection of its assigned DMM. The Exchange further believes that the increase in competition would provide DMMs with a greater incentive to perform optimally.<sup>19</sup>

In addition, because on Pillar, there would be no Floor participants, the Exchange proposes substantive differences for the proposed rule to not include references to Floor-based personnel. Proposed Rule 7.25E(b)(1)(B)(ii), as compared to current Rule 103B(III)(A)(2)(b) - Equities, would not refer to the “individual DMM” assigned to the security because on Pillar, the DMM assigned to a security would be at the ETP Holder level. In addition, proposed Rule 7.25E(b)(2)(A), as

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<sup>18</sup> The Exchange does not propose rule text for Rule 7.25E based on current Rule 103B(II)(B) – (H) - Equities because these requirements correlate to quoting requirements depending on the consolidated average daily volume of a security, which would not be applicable on Pillar.

<sup>19</sup> Proposed Rule 7.25E(b)(1)(A) is based in part on NYSE Rule 103B(III)(A)(1). See also Securities Exchange Act Release No. 69735 (June 11, 2013), 78 FR 36279 (June 17, 2013) (SR-NYSE-2013-39) (Notice of Filing and immediate effectiveness of proposed NYSE rule change to increase number of DMM firms to be interviewed from three to four).



compared to current Rule 103B(III)(B)(1) – Equities, would provide that the Exchange Selection Panel would be comprised only of Exchange staff. Proposed Rule 7.25E(b)(3) would require the DMM selected to remain the assigned DMM for one year from the date that the issuer begins trading on the Exchange, which is based on Rule 103B(III)(B)(2) - Equities.<sup>20</sup>

Proposed Rule 7.25E(b)(4) through (11) would address allocation of specified listings and is based on current Rule 103B(VI) - Equities, with non-substantive differences to re-number the provisions, update rule cross references, and streamline the rule text:

- proposed Rule 7.25E(b)(4) would govern the allocation of a spin-off or related company to an existing listed company and is based on Rule 103B(VI)(A)(1) and (3) - Equities;
- proposed Rule 7.25E(b)(5) would govern the allocation of a warrant issued by a listed company and is based on Rule 103B(VI)(A)(2) - Equities;
- proposed Rule 7.25E(b)(6) would govern the allocation of rights traded on the Exchange and is based on Rule 103B(VI)(A)(4) - Equities;
- proposed Rule 7.25E(b)(7) would govern relistings and is based on Rule 103B(VI)(B) - Equities;
- proposed Rule 7.25E(b)(8) would govern common stock listing after preferred stock and is based on Rule 103B(VI)(C) – Equities;
- proposed Rule 7.25E(b)(9)(A) – (C) would govern listed company mergers and is based on Rule 103B(VI)(D)(1) – (4) - Equities;
- proposed Rule 7.25E(b)(10) would govern target stocks and is based on Rule 103B(VI)(E) - Equities; and
- proposed Rule 7.25E(b)(11) would govern the allocation of closed-end management investment companies and is based on Rule 103B(VI)(F) – Equities.

Proposed Rule 7.25E(c) would be titled “Reallocation Process.” Proposed Rules 7.25E(c)(1)(A) – (C) would describe the reallocation process when an issuer requests such reallocation, including Exchange regulatory staff review of any such request. This proposed rule text is based on Rule 103B(IV) - Equities and Supplementary Material .10 to Rule 103B - Equities with non-substantive

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The Exchange does not propose rule text based on Rule 103B(III)(B)(3) - Equities relating to requirements for a DMM unit to commit extra resources in order to be considered for foreign listings. The Exchange believes that proposed Rule 7.24E(b)(2), which requires market making ability as a factor in assessing whether to approve a Market Maker as a DMM would address any considerations of whether a DMM would have the capability to be a Market Maker in foreign listings.

differences to re-number the rule text and update rule cross-references.

Proposed Rule 7.25E(c)(2)(A) – (D) would describe the reallocation process where a DMM’s performance in a particular market situation was, in the Exchange’s judgment, so egregiously deficient as to call into question the Exchange’s integrity or impair the Exchange’s reputation for maintaining an efficient, fair, and orderly market. The proposed Rule is based on current Rule 103B(III)(V)(A) – (E) – Equities with non-substantive differences to re-number the rule text and update rule cross references.

Proposed Rule 7.25E(d), titled “Allocation Freeze Policy,” would provide that, in the event a DMM unit (1) loses its registration in a security as a result of proceedings under the Rule 8000 or 9000 Series, as applicable, or (2) voluntarily withdraws its registration in a security as a result of possible proceedings under those rules, the DMM would be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security. The proposed Rule is based on current Rule 103B(III)(VI)(G) - Equities with non-substantive differences to re-number the rule text and update rule cross references.

Proposed Rule 7.25E(e), titled “Allocation Sunset Policy,” would provide that allocation decisions would remain effective with respect to any initial public offering listing company that lists on the Exchange within twelve months of such decision. The proposed Rule is based on current Rule 103B(III)(VI)(H) - Equities with non-substantive differences to re-number the rule text and update rule cross references.

Finally, proposed Rule 7.25E(f) would set forth the criteria for applicants that are not currently DMMs to be eligible to be allocated a security as a DMM, including that the proposed DMM demonstrate that it understands the DMM business, including the needs of issuers, and has an ability and willingness to trade as necessary to maintain fair and orderly markets. Under the proposed Rule, the Exchange would also consider if the proposed DMM or any of its participants is a DMM or market maker on any exchange, the quality of performance of the unit or its participants as a DMM or market maker on such exchange. The Exchange would also consider any action taken or warning issued within the past 12 months by any regulatory or self-regulatory organization against the unit or any of its participants with respect to any capital or operational problem, or any regulatory or disciplinary matter. The proposed Rule is based on current Rule 103B(III)(VI)(I) – Equities with proposed substantive differences not to include rule text that relates to individual DMMs or additional capital requirements, as these would not be applicable to DMMs on Pillar. The Exchange also proposes non-substantive differences to re-number the rule text and update rule cross references.

Rule 7.26E

The Exchange proposes new Rule 7.26E titled “DMM Combination Policy” that would establish the requirement for Exchange approval of certain proposed combinations of DMMs; the contents of a written submission to the Exchange by proponents of the DMM combination addressing certain specific enumerated factors for the Exchange to consider in approving the transaction; and the procedures the Exchange would follow in approving or disapproving a proposed DMM combination. The proposed Rule is based on current Rule 123E – Equities (“DMM Combination Review Policy”) with proposed substantive differences not to include rule text that relates to Floor-based DMM activities as this will not be applicable on Pillar. Because this rule would govern DMM combinations on the Exchange, the Exchange proposes that Rule 123E – Equities would not be applicable to trading on the Pillar trading platform.

Current Rules that would not be Applicable to Pillar

In addition to the rules identified above, the Exchange has identified additional current rules that would not be applicable to trading on Pillar. These rules do not have a counterpart in the proposed Pillar rules, described above, but would be obsolete on the new, fully-automated trading platform.

The main category of rules that would not be applicable to trading on the Pillar trading platform are those that are specific to Floor-based trading. For this reason and the additional reasons noted below, the Exchange proposes that the following Floor-specific rules would not be applicable to trading on the Pillar trading platform:

- Rule 98 – Equities (Operation of a DMM Unit). In the Trading Rules Filing, the Exchange has proposed Rule 6.3E (Prevention of the Misuse of Material, Nonpublic Information), which is based on NYSE Arca Equities Rule 6.3 and would require that every ETP Holder establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such ETP Holder or persons associated with such ETP Holder. Rule 98(c)(2) – Equities is based on NYSE Arca Equities Rule 6.3 and the remainder of Rule 98 – Equities governs the unique role of DMMs on the Exchange’s cash equities Floor. Because Rule 6.3E is designed to prevent fraudulent and manipulative acts and practices by addressing the potential misuse of material non-public information and because the Exchange would not have Floor-based DMM trading on Pillar, the Exchange proposes that Rule 98 – Equities would not be applicable to trading on Pillar.
- Rule 104A – Equities (DMMs – General).

- Rule 104B – Equities (DMM Commissions).<sup>21</sup>
- Rule 113 – Equities (DMM Unit’s Public Customers).
- Rule 460 – Equities (DMMs Participating in Contests). Because DMMs on the Pillar platform would not have the ability to set prices, the current restrictions on DMMs from participating in proxy contests of a company registered to that DMM would be unnecessary. The Exchange accordingly proposes that Rule 460 – Equities would not be applicable to trading on Pillar.

In addition, the Exchange proposes to delete Rules 99 – Equities, Rule 100 – Equities, and Rule 101 – Equities, all of which are currently marked “Reserved.” The Exchange also proposes to delete Rule 113 Former – Equities (DMMs’ Public Customers) as obsolete.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>23</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 facilitating transactions in securities, 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. The Exchange believes that the proposed rules to support Pillar on the Exchange would remove impediments to and perfect the mechanism of a free and open market because they provide for a complete set of market maker rules to support the Exchange’s transition to a fully automated cash equities trading model on the Pillar trading platform.

Generally, the Exchange believes that the proposed rules would support the Exchange’s transition to a fully automated cash equities trading market with a price-time priority model because they are based on the rules governing market makers of its affiliated market, NYSE Arca Equities. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system because they are based on the approved

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<sup>21</sup> In the Trading Rules Filing, supra note 5, the Exchange has proposed Rule 7.3E, which provides that ETP Holders may not charge fixed commissions, which would be applicable to DMMs.

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

<sup>23</sup> 15 U.S.C. 78f(b)(5).

rules of another exchange.

More specifically, the Exchange believes that the proposed definitions of Market Maker, Market Maker Authorized Trader and DMM in Rule 1.1E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed definitions are terms that would be used in the additional rules proposed by the Exchange.

The Exchange also believes that proposed Rules 7.20E and 7.21E, providing for the registration of Market Makers and Market Maker Authorized Traders, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements for an ETP Holder to register as a Market Maker and Market Maker Authorized Trader for trading on the Exchange's Pillar trading platform. The proposed rule change would also promote just and equitable principles of trade by requiring the same registration requirements as have already been approved for NYSE Arca Equities.

The Exchange believes that proposed Rule 7.22E, providing for the registration of a Market Maker other than a DMM in a security, would similarly remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements and process for registered Market Makers to register to trade a specific security on the Exchange's Pillar trading platform. The proposed registration process is based on the same process on NYSE Arca Equities and therefore would promote just and equitable principles of trade by specifying requirements that are based on the approved rules of another exchange.

The Exchange believes that proposed Rules 7.23E, setting forth the obligations and duties of Market Makers, including DMMs, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules that would govern trading on the Exchange that are consistent with the duties and obligations for Market Makers currently in place on the Exchange's affiliate NYSE Arca Equities that have been previously approved by the Commission. For similar reasons, the Exchange believes that proposed Rule 7.23E is also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by establishing regulatory requirements for Market Maker participation on the Exchange's electronic marketplace that would enhance the quality of its market and thereby support investor protection and public interest goals.

The Exchange believes that proposed Rule 7.24E, setting forth the registration and obligations for DMMs, would remove impediments to and perfect the mechanism of a free and open market and a national market system by maintaining the Exchange's current structure to assign listed securities to DMMs. The Exchange believes that the proposed heightened quoting obligations for DMMs would encourage additional displayed liquidity on the Exchange in

Exchange-listed securities. Unlike under current Exchange rules, DMMs on Pillar would not be entitled to the additional benefit of a parity allocation and therefore the proposed obligations are reasonable and are designed to enhance the quality of the Exchange's market for its listed companies. The Exchange further believes that by establishing distinct requirements for DMMs, the proposal is also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Exchange believes that proposed Rules 7.25E, setting forth the standards and process for DMM security allocation and reallocation, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish transparent and objective rules and standards governing the allocation of securities to its DMM that are based on current rules. By adopting the current allocation process set forth in Rule 103B – Equities for DMMs on the Exchange's all-electronic trading platform, the Exchange believes that it would foster continuity and ensure fair and orderly trading in its listed securities. The Exchange believes that the proposed substantive difference for proposed Rule 7.25E(b)(1)(A) to increase the number of DMMs to be interviewed from two to four would remove impediments to and perfect the mechanism of a free and open market and a national market system because increasing the number of DMMs participating in the issuer allocation process would increase competition to provide services to issuers, and will provide the issuer with more choice in the selection of its DMM.

The Exchange believes that proposed Rules 7.26E, setting forth the DMM combination review policy, would remove impediments to and perfect the mechanism of a free and open market and a national market system by establishing a review process by which the Exchange would continue to review proposed combinations of DMMs in the same manner as it currently does for Floor-based DMMs pursuant to Rule 123E – Equities.

The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to specify which current rules would not be applicable to trading on the Pillar trading platform. The Exchange believes that the proposed legend that would be added to existing rules, "[t]his rule is not applicable to trading on the Pillar trading platform," would promote transparency regarding which rules would govern trading on the Exchange once it transitions to Pillar. The Exchange has proposed to add this legend to rules that would be superseded by proposed rules or rules that would not be applicable because they concern Floor-based trading.

The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to delete Rules 99 – Equities, Rule 100 – Equities, and Rule 101 – Equities, all of which are currently marked "Reserved," because it would reduce confusion and promote transparency to delete references to rules that do not have any substantive content.

The Exchange further believes that because it is transitioning to a new rule numbering framework, maintaining these rules on a reserved basis is no longer necessary.

Finally, the Exchange believes that deleting Rule 113 Former – Equities as obsolete removes impediments to and perfects the mechanism of a free and open market by simplifying its rulebook and removing confusion that may result from having obsolete rules in the Exchange’s rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange’s jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange’s rulebook. The Exchange also believes that eliminating obsolete rules would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency as to which rules are operable, thereby reducing potential confusion.

4. 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 proposed change is designed to propose rules that would govern Market Makers on the Exchange’s new Pillar trading platform, which would be a fully automated cash equities trading market that trades all NMS Stocks and is based on both the rules of NYSE Arca Equities and current rules. The Exchange believes that the proposed rules would promote competition because it would provide for obligations relating to Market Makers that are based on established rules, thereby reducing any potential barriers to entry for Market Makers registered on other exchanges to be approved as a Market Maker on the Exchange when it transitions to Pillar. The Exchange further believes that its proposed rules governing DMMs would not impose any burden on competition that is not necessary or appropriate because the proposed rules are designed to provide continuity for Exchange-listed companies to maintain existing DMMs assigned to their securities, while at the same time proposing obligations for DMMs that are tailored to a price-time automated trading model.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based in part on NYSE Arca Equities Rules 1.1, 7.20, 7.21, 7.22, 7.23, NYSE Rule 103B(III)(A)(1), and BATS Rule 11.8.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change



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

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rules Relating to Market Makers Applicable when the Exchange Transitions Trading to Pillar, the Exchange's New Trading Technology Platform

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 25, 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, 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 rules relating to market makers that would be applicable when the Exchange transitions trading to Pillar, the Exchange's new trading technology platform. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

With Pillar, the Exchange proposes to transition its cash equities trading platform from a Floor-based market with a parity allocation model to a fully automated price-time priority allocation model. The Exchange will be filing several proposed rule changes to support the NYSE MKT cash equities implementation of Pillar. The Exchange has already adopted the rule numbering framework of the NYSE Arca Equities, Inc. (“NYSE Arca Equities”) rules for Exchange cash equities trading on the Pillar trading platform.<sup>4</sup> As described in the Framework Filing, the Exchange denoted the rules applicable to cash equities trading on Pillar with the letter “E” to distinguish such rules from current Exchange rules with the same numbering. In addition, the Exchange filed a proposed rule change to support Exchange trading of securities listed on New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., and other exchanges on an unlisted trading

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<sup>4</sup> See Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the “Framework Filing”).

privileges basis, including Exchange Traded Products listed on other exchanges.<sup>5</sup> The Exchange has also proposed rules based on the rules of NYSE Arca Equities to support the transition of Exchange trading to a fully automated price-time priority allocation model.<sup>6</sup>

In this filing, the Exchange proposes rules governing market makers on the Exchange following the transition to Pillar. Specifically, for all securities that would trade on the Exchange, including UTP Securities,<sup>7</sup> an ETP Holder<sup>8</sup> could register as a Market Maker<sup>9</sup> and be subject to obligations similar to the obligations of a Market Maker on NYSE Arca Equities.<sup>10</sup> The Exchange proposes that the following rules, based on NYSE Arca Equities rules of the same number with non-substantive differences, would govern Market Makers on the Pillar trading platform:

- proposed Rule 1.1E(v) (definition of Market Maker);
- proposed Rule 1.1E(w) (definition of Market Maker Authorized

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<sup>5</sup> See Securities Exchange Act Release No. 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR-NYSEMKT-2016-103) (Notice) (the “ETP Listing Rules Filing”).

<sup>6</sup> See SR-NYSEMKT-2017-1 (“Trading Rules Filing”).

<sup>7</sup> The term “UTP Security” is defined in Rule 1.1E(ii) to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges.

<sup>8</sup> In the Trading Rules Filing, the Exchange proposes to define the term “ETP Holder” in Rule 1.1E(n) as a member organization that has been issued an Equity Trading Permit. The term “member organization” is defined in Rule 2(b) – Equities.

<sup>9</sup> As described below, the Exchange proposes to define the term “Market Maker” in Rule 1.1E(v).

<sup>10</sup> On NYSE Arca Equities, the term “Market Maker” is defined in NYSE Arca Equities Rule 1.1(v).

Trader);

- proposed Rule 7.20E (Registration of Market Makers);
- proposed Rule 7.21E (Obligations of Market Maker Authorized Traders);
- proposed Rule 7.22E (Registration of non-DMM Market Makers in a Security); and
- proposed Rule 7.23E (Obligations of Market Makers).

In addition, the Exchange proposes to require that a Designated Market Maker (“DMM”) be registered in each Exchange-listed security, which is based on current rules. As proposed, Exchange DMMs would be required to meet all of the proposed obligations for Market Makers, and would be subject to rules-based heightened quoting obligations in their assigned securities.

Unlike Exchange DMMs under current rules, which are Floor-based individuals who operate within a DMM unit of a member organization,<sup>11</sup> the proposed rules for DMMs would provide for electronic access only, would not assign securities at the natural person level, and would not require DMMs to facilitate the opening, reopening, or closing of assigned Exchange-listed securities. In addition, the proposed rules would not entitle DMMs to a parity allocation of executions, and also would not subject DMMs to heightened capital requirements. Finally, DMMs would continue to be subject to rules

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<sup>11</sup> See Rule 2(i) – Equities (defining the term “DMM” to mean an individual member, officer, partner, employee, or associated person of a DMM unit who is approved by the Exchange to act in the capacity as a DMM) and Rule 98(b)(1) – Equities (defining a “DMM unit” as a trading unit within a member organization that is approved pursuant to Rule 103 – Equities to act as a DMM unit).

governing allocation of securities and combination of DMM units that are based on current rules.

The Exchange proposes the following rules, which are based on both NYSE Arca Equities rules and current Exchange rules, to establish the requirements for DMMs on the Pillar trading platform.

- proposed Rule 1.1E(ccc) (definition of DMM);
- proposed Rule 7.24E (Registration and Obligation of DMMs);
- proposed Rule 7.25E (DMM Security Allocation and Reallocation); and
- proposed Rule 7.26E (DMM Combination Review Policy).

Subject to rule approvals for the ETP Listing Rule Filing, Trading Rules Filing, and this filing, the Exchange will announce the transition of its cash equities trading to the Pillar trading system by Trader Update, which the Exchange anticipates will be in the second quarter of 2017.

Because the Exchange would not be trading on both its current Floor-based trading platform and the Pillar trading platform at the same time, once trading on the Pillar trading platform begins, specified current Exchange equities trading rules would no longer be applicable. Accordingly, as described in more detail below, for each current equities rule that would no longer be applicable when trading on the Pillar trading platform begins, the Exchange proposes to state in a preamble to such rule that “this rule is not applicable to trading on the Pillar trading platform.” Once the Exchange has transitioned to the Pillar trading platform, the Exchange will file a separate proposed rule change to delete those current rules that have been identified in this filing as not being

applicable to trading on Pillar. Current Exchange rules governing equities trading that do not have this preamble will continue to govern Exchange operations on its cash equities trading platform.

#### Proposed Rule Changes

As noted above, the Exchange proposes rules for Market Makers that would be applicable to cash equities trading on Pillar that are based on NYSE Arca Equities Rules. Throughout these proposed rules, the Exchange proposes non-substantive differences as compared to the NYSE Arca Equities rules to use the term “Exchange” instead of the terms “NYSE Arca Marketplace,” “NYSE Arca,” or “Corporation”; use the term “Exchange Book” instead of “NYSE Arca Book”; use the term “will” instead of “shall”; and use the terms “mean” or “have the meaning” instead of the terms “shall mean” or “shall have the meaning.”<sup>12</sup> The Exchange proposes that rules governing Market Makers on the Pillar trading platform would be set forth in Rules 1.1E (Definitions) and Section 2 (Market Makers) of Rule 7E – Equities Trading.

#### Rule 1E

As described in the Framework Filing, Rule 1E specifies definitions that are applicable to trading on the Pillar trading platform. The Exchange proposes the text for following existing definitions that are marked “Reserved”:

- The Exchange proposes to amend Rule 1.1E(v) to delete the term “Reserved” and define the term “Market Maker” as the ETP Holder that acts as a Market Maker pursuant to Rule 7E. This

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<sup>12</sup> Because these non-substantive differences would be applied throughout the proposed rules, the Exchange will not note these differences separately for each proposed rule.

proposed rule is based on NYSE Arca Equities Rule 1.1(v), which defines the term “Market Maker,” without any substantive differences.

- The Exchange proposes to amend Rule 1.1E(w) to delete the term “Reserved” and define the term “Market Maker Authorized Trader” or “MMAT” to mean an Authorized Trader<sup>13</sup> who performs market making activities pursuant to Rule 7E on behalf of a Market Maker. This proposed rule is based on NYSE Arca Equities Rule 1.1(w), which defines the term “Market Maker Authorized Trader,” without any substantive differences.
- The Exchange proposes to amend Rule 1.1E(ccc) to delete the term “Reserved” and define the term “Designated Market Maker” and “DMM” to mean a registered Market Maker that is subject to additional requirements set forth in Section 2 of Rule 7E for Exchange-listed securities assigned to such DMM. This proposed definition would be new and is not based on the rules of NYSE Arca Equities. Because DMMs would be Market Makers, and a Market Maker designation is at the ETP Holder level, this proposed definition would differ from current rules, which define a DMM at the individual level.<sup>14</sup>

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<sup>13</sup> In the Trading Rules Filing, supra note 6, the Exchange proposes to define the term “Authorized Trader” in Rule 1.1E(g).

<sup>14</sup> See Rule 2(i) – Equities, supra note 11.

Rule 7.20E

The Exchange proposes to amend Rule 7.20E to delete the term “Reserved” and re-name it “Registration of Market Makers.” Because the Exchange would operate as a fully-automated market, the Exchange proposes that Market Makers on its Pillar cash equities trading platform would have the same registration requirement as market makers on NYSE Arca Equities. Accordingly, the Exchange proposes Rule 7.20E based on NYSE Arca Equities Rule 7.20 without substantive differences.

Proposed Rule 7.20E is based on NYSE Arca Equities Rule 7.20 with specified differences.

- First, because the Exchange already has member organizations that are registered as market makers, the Exchange proposes that such member organizations would continue to be registered as Market Makers under proposed Rule 7.20E without being required to re-register as a Market Maker.<sup>15</sup> The Exchange therefore proposes to specify in Rule 7.20E(a)(i) that no ETP Holder would act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Exchange pursuant to Rule 7.20E or is a member organization registered as a DMM or SLMM under Exchange rules as of one business day before the Pillar transition date.<sup>16</sup> Accordingly, a member organization

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

<sup>16</sup> As described *infra*, the Pillar implementation date is subject to approval of the



registered as either a DMM or SLMM on a specified date close to the transition of trading to Pillar would be deemed registered as a Market Maker on the Exchange pursuant to proposed Rule 7.20E and would not need to re-apply for Market Maker status.

- Second, proposed Rule 7.20E(b) is based on NYSE Arca Equities Rule 7.20(b) with the following change to the second sentence so that it would provide that “[a]pplications will be reviewed by the Exchange, which will consider the ETP Holder’s capital, operations, personnel, technical resources, and disciplinary history.” The Exchange also proposes an additional clarifying sentence that is not in NYSE Arca Equities Rule 7.20(b) that would provide that after reviewing the application, the Exchange would either approve or disapprove the ETP Holder’s registration as a Market Maker. These proposed differences compared to NYSE Arca Equities Rule 7.20 do not result in any substantive differences.
- Third, the Exchange proposes that DMMs would not be covered by the provisions of proposed Rule 7.20E(e), which governs a Market Maker’s withdrawal of registration as a Market Maker in a security. As described in greater detail below, the Exchange proposes to address DMM withdrawal from registration in a

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Trading Rules Filing, ETP Listing Rules Filing, and this filing, and will announce the implementation date by Trader Update. Once announced, the Exchange will update the rule text with the implementation date.

security in proposed Rule 7.24E(a)(4). The Exchange also proposes a substantive difference to proposed Rule 7.20E(e) to provide that a Market Maker that fails to notify the Exchange of its written notice of withdrawal on the business day prior to such withdrawal may be subject to formal disciplinary action. The Exchange does not believe that a Market Maker needs to provide ten business day's notice of such withdrawal of registration, as required by NYSE Arca Equities Rule 7.20(e), because the Exchange can process such withdrawals with only one business day's notice.

- Finally, the Exchange proposes a non-substantive difference to proposed Rule 7.20E(c) and (e) as compared to NYSE Arca Equities Rule 7.20(c) and (d) to use Exchange disciplinary rule references in lieu of NYSE Arca Equities disciplinary rule references.

#### Rule 7.21E

The Exchange proposes to amend Rule 7.21E to delete the term "Reserved" and re-name it "Obligations of Market Maker Authorized Traders." Proposed Rule 7.21E would set forth the requirement that MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. The proposed rule would also specify the registration requirements for MMAT and the procedures for suspension and withdrawal of registration. This proposed rule is based on NYSE Arca Equities Rule 7.21 without any substantive differences.

Rule 7.22E

The Exchange proposes to amend Rule 7.22E to delete the term “Reserved” and re-name it “Registration of Non-DMM Market Makers in a Security.” Proposed Rule 7.22E would set forth the process for Market Makers, other than DMMs, to become registered in a security and the factors the Exchange may consider in approving the registration of a Market Maker in a security. The proposed Rule would also describe both termination of a Market Maker’s registration in a security by the Exchange and voluntary termination by a Market Maker.

Proposed Rule 7.22E is based on NYSE Arca Equities Rule 7.22 with the following differences:

- First, because DMM registration in a security would be governed by proposed Rule 7.25E, the Exchange proposes that not all Market Makers would register in a security pursuant to the requirements in proposed Rule 7.22E. Instead, proposed Rule 7.22E would govern only registration in a security for non-DMM Market Makers.
- Second, in proposed Rule 7.22E(a), the Exchange proposes that a Market Maker may become registered in a security by submitting a request to the Exchange rather than the text in NYSE Arca Equities Rule 7.22, which provides that a prospective Market Maker should file a security registration form. The Exchange believes the proposed text provides flexibility regarding the manner that the Exchange would accept such requests, including electronically,

and is not a substantive difference.

- Third, the Exchange proposes a substantive difference compared to NYSE Arca Equities Rule 7.22 because it does not propose rule text based on paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22. Those NYSE Arca Equities rules govern designated market makers and lead market makers on NYSE Arca Equities. Because the Exchange is not proposing to have Market Makers with the same obligations as NYSE Arca Equities designated market makers and lead market makers, the Exchange is not including in proposed Rule 7.22E the text from paragraphs (c) and (d) of NYSE Arca Equities Rule 7.22. The Exchange proposes that requirements relating to DMMs would be set forth in proposed Rules 7.24E, 7.25E, and 7.26E, described in greater detail below.
- Finally, the Exchange proposes additional, non-substantive differences by replacing references to NYSE Arca Equities Rule 10 and 10.13 with references to the Rule 9200 and Rule 9500 Series, respectively.

*Rule 7.23E*

The Exchange proposes to amend Rule 7.23E to delete the term “Reserved” and re-name it “Obligations of Market Makers.” Proposed Rule 7.23E would set forth the obligation of all Market Makers, including DMMs, to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange and would delineate the specific responsibilities

and duties of Market Makers, including the obligation to maintain continuous, two-sided trading in registered securities and certain pricing obligations Market Makers are required to adhere to.

Proposed Rule 7.23E is based on NYSE Arca Equities Rule 7.23 with the following differences:

- First, proposed Rules 7.23E(a)(1)(B)(iii) and (iv) would have updated definitions for the terms “Designated Percentage” and “Defined Limit.” To reflect that the applicable percentages are based on how a security is designated under Regulation NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”), the Exchange proposes to use LULD Plan definitions in proposed Rule 7.23E(a)(1)(B). Using these definitions is based on Bats BZX, Inc. (“Bats”) Rule 11.8(d)(2)(D) and (E), which similarly uses LULD Plan definitions for defining the terms “Designated Percentage” and “Defined Limit.” This proposed difference compared to NYSE Arca Equities Rule 7.23(a)(1)(B)(iii) and (iv) is non-substantive and is meant to be clarifying.
- Second, proposed Rule 7.23E(a)(2) would require that a Market Maker maintain adequate minimum capital in accordance with the provisions of Rule 15c3-1 under the Securities Exchange Act of 1934 (“Rule 15c3-1”), rather than cite to NYSE Arca Equities Rule 4.1. This proposed difference is non-substantive because NYSE Arca Equities Rule 4.1 cross references Rule 15c3-1 and therefore

the capital requirements for Market Makers on the Exchange would be identical to the capital requirements for Market Makers on NYSE Arca Equities.

- Finally, the Exchange proposes that the provisions of proposed Rule 7.23E(d), regarding temporary withdrawal of an ETP Holder from Market Maker status in the securities in which it is registered, would not be applicable to Market Makers acting as a DMM. As described in greater detail below, the Exchange proposes to address DMM withdrawal from registration in a security in proposed Rule 7.24E(a)(4).

Rule 7.24E

The Exchange proposes to amend Rule 7.24E to delete the term “Reserved” and re-name it “Registration and Obligations of DMMs.” Proposed Rule 7.24E would describe the registration and temporary withdrawal procedures and obligations of DMMs on the Exchange’s Pillar trading platform. Proposed Rule 7.24E is new and is based in part on provisions of current 98A – Equities, Rule 103 – Equities, Rule 104 – Equities, and Rule 107B - Equities.

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

Proposed Rule 7.24E(b) would be titled “Registration” and would require that an

ETP Holder be registered as a Market Maker and approved as a DMM to be eligible to receive an allocation as a DMM under proposed Rule 7.25E. This proposed rule text is based in part on current Rule 103(a)(i) – Equities, which provides that no member organization shall act as a DMM unit on the Exchange in any security unless such member organization is registered as a DMM unit in such security with the Exchange and unless the Exchange has approved of the member organization so acting as a DMM unit and has not withdrawn such approval.

Proposed paragraphs (b)(1) – (4) of Rule 7.24E would specify additional requirements relating to registration.

- The Exchange proposes to provide for continuity for its listed companies and provide in proposed Rule 7.24E(b)(1) that a member organization that is approved to operate as a DMM unit under Exchange rules as of one business day before the Pillar transition date would automatically be approved as a DMM under proposed Rule 7.24E. This proposed rule text, together with proposed Rule 7.25E(a)(1), described below, would ensure that DMM units currently assigned to a security would continue to be the assigned DMM in a security when the Exchange transitions to the Pillar trading platform.
- Proposed Rule 7.24E(b)(2) would provide for how a Market Maker that is not currently approved as a DMM may become a DMM. As proposed, Market Makers that are not registered as a DMM as of one business day before the Pillar transition date would be required

to file an application in writing in such form as required by the Exchange to be considered eligible to receive an allocation as a DMM. In reviewing the application, the Exchange may consider the Market Maker's market making ability, capital available for market making, and such other factors as the Exchange deems appropriate, including those set forth in proposed Rules 7.25E(f) and 7.26E. After reviewing the application, the Exchange would either approve or disapprove the applicant Market Maker's registration as a DMM. This proposed rule text is based on Rule 103(b)(i) – Equities. The Exchange proposes a substantive difference from current rules to reference proposed Rules 7.25E(f) and 7.26E, described below, which establish additional factors that the Exchange may consider in determining whether to approve a DMM.

- Proposed Rule 7.24E(b)(3) would provide that an ETP Holder registered as a DMM in a security may also be registered as a Market Maker in such security pursuant to Rule 7.22E(a) only if such ETP Holder maintains information barriers between the trading unit operating as a DMM and the trading unit operating as a non-DMM Market Maker in the same security. This proposed rule is based on Rule 107B(h)(2)(A) – Equities, which provides that a DMM unit shall not also act as an SLP in the same securities in which it is registered as a DMM. Because current rules define a



DMM unit as a trading unit within a member organization,<sup>17</sup> current Rule 107B(h)(2)(A) – Equities permits a member organization to operate as an SLP in a security that is assigned to a DMM unit provided that such SLP is not part of the DMM unit. Accordingly, proposed Rule 7.24E(b)(3) would operate substantially the same as how a member organization currently may be both a DMM and an SLP in the same security through the use of information barriers.

- Proposed Rule 7.24E(b)(4) would provide that a DMM may apply to withdraw temporarily from its DMM status in one or more assigned securities. Exchange rules currently provide for the temporary reallocation of a security, but the current rule is geared toward Floor-based individuals making the determination to temporarily reassign a security to another DMM.<sup>18</sup> To maintain the current ability to temporarily reassign a security to another DMM for legal or regulatory reasons and also update the rule text to reflect that it would not be a decision made by Floor participants, the Exchange proposes rule text based in part on

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<sup>17</sup> See Rule 98(b)(1) – Equities.

<sup>18</sup> See Rule 103.10 – Equities (providing that the Chief Regulatory Officer or his or her designee and two non-DMM Executive Floor Governors or if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors, shall have the power to reallocate temporarily any security on an emergency basis to another location on the Exchange whenever in their opinion such reallocation would be in the public interest).

NYSE Arca Equities Rule 7.23(d) instead of current Rule 103.10 - Equities.

Accordingly, as proposed, the DMM would be required to base its request to temporarily withdraw on demonstrated legal or regulatory requirements that necessitate a temporary withdrawal, or to provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. As further proposed, the Exchange would act promptly on a withdrawal request and, if the request is granted, the Exchange may temporarily reassign the security or securities to another DMM. As proposed, Rule 7.24E(b)(4) would further provide that the DMM temporarily assigned a security or securities would be subject to the obligations set forth in paragraph (b) of proposed Rule 7.24E, described below, when acting as a temporary DMM in such security or securities. By requiring a legal or regulatory basis for requesting a temporary withdrawal in registration in a security, the Exchange believes the proposed rule would have the same effect as current Rule 103.10 – Equities, which requires that the determination to temporarily reallocate securities be made for the public interest.

- Proposed Rule 7.24E(b)(5) would provide that a DMM may not be registered in a security of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM. This proposed rule text is based on current Rule 98A –

Equities, with non-substantive differences to use Pillar terminology. The Exchange proposes that Rule 98A – Equities would not be applicable to trading on the Pillar trading platform.

The Exchange proposes that Rule 103 – Equities would not be applicable to trading on the Pillar trading platform. Instead, proposed Rule 7.24(b), together with proposed Rule 7.20E, described above, would establish the registration requirements for DMMs.

Proposed Rule 7.24E(c) would describe the obligations of DMMs on the Pillar Trading Platform. Specifically, in addition to meeting the Market Maker obligations set forth in Rule 7.23E, DMMs would be required to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 25% of the day as measured across all Exchange-listed securities that have been assigned to the DMM. Proposed Rule 7.24E(c) would provide that time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. In other words, this would be a portfolio-based quoting requirement. Orders entered by the DMM that are not displayed would not be included in the inside quote calculation.

The text of proposed Rule 7.24E(c) is based in part on current Rule 104(a)(1)(A) – Equities. Currently, DMMs are required to maintain a quote at the inside at least 10% of the trading day for securities with a consolidated average daily volume of less than one million shares and at least 5% of the trading day for securities with a consolidated average daily volume equal to or greater than one million shares. Similar to the proposed quoting requirement set forth in proposed Rule 7.24E(c), the current quoting requirements are portfolio-based quoting requirements. On the Pillar trading platform,

because DMMs would not have other obligations as set forth in Rule 104(a) – Equities, such as the requirement to facilitate openings, reopenings, and closings, the Exchange proposes a heightened quoting obligation of 25% across all securities assigned to a DMM, regardless of consolidated average daily trading volume for a security. The Exchange otherwise proposes that the manner that a DMM’s quoting obligations would be calculated would be the same as under current rules.

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

*Rule 7.25E*

The Exchange proposes new Rule 7.25E titled “DMM Security Allocation and Reallocation” to set forth the allocation and reallocation of securities to DMMs following the transition to Pillar. The proposed Rule is based on current Rule 103B – Equities with substantive differences to reflect that an allocation would be to a DMM at the ETP Holder level rather than at the individual DMM level and non-substantive differences to streamline the rule text. In addition, the Exchange would use the term “DMM,” as defined in proposed Rule 1.1E(ccc) to replace current references to either DMM (as an individual) or DMM unit. Because proposed Rule 7.25E would establish the requirements for the allocation and reallocation of securities to DMMs on Pillar, the Exchange proposes that Rule 103B – Equities would not be applicable to trading on the Pillar trading platform.

Proposed Rule 7.25E(a) would set forth the criteria for ETP Holders registered as DMMs to be eligible for allocation and reallocation of securities.

- Proposed Rule 7.25E(a)(1) would provide that a security listed on the Exchange as of one business day before the Pillar transition date would continue to be allocated to the member organization registered as a DMM in such security, unless reallocated under paragraph (c) of the proposed Rule, described below. This proposed rule, together with proposed Rule 7.24E(b)(1), described above, would ensure continuity for Exchange-listed companies to stay with the same DMM after the Exchange transitions to Pillar. To reflect that an allocation decision under current Rule 103B – Equities may occur after the transition date (e.g., the allocation process began before the Pillar transition date), the Exchange proposes to further provide that any allocation decisions made under Rule 103B – Equities after one business day before the Pillar transition date would be deemed an allocation under proposed Rule 7.25E(b), described in greater detail below.
- Proposed Rule 7.25E(a)(2) would provide that a security would be allocated to a DMM when such security (A) is initially listed on the Exchange; and (B) must be reassigned under either this Rule or the Exchange’s Company Guide. This proposed rule text is based on current Rule 103B(I) – Equities with non-substantive differences to use Pillar terminology.
- Proposed Rule 7.25E(a)(3) would provide that a DMM’s eligibility to participate in the allocation process would be determined at the

time the interview is scheduled by the Exchange. This proposed rule text is based on current Rule 103B(II)(I) - Equities with non-substantive differences to use Pillar terminology.

- Proposed Rule 7.25E(a)(4) would provide that DMMs would be eligible to participate in the allocation process of a listed security if the DMM meets the quoting requirements specified in proposed Rule 7.24E(c), which the Exchange proposes to define as “DMM obligations.” Rule 7.25E(a)(4) is based on current Rule 103B(II)(A) – Equities with non-substantive differences to cross reference proposed DMM obligations.<sup>19</sup>

Proposed Rules 7.24E(a)(4)(A) – (D) would describe the consequences for a DMM’s failure to meet DMM obligations.

These proposed rules are based on current Rule 103B(II)(J)(1) – (4) - Equities with differences to cross reference the proposed DMM obligations rather than current quoting requirements.

Proposed Rule 7.25E(b) would describe the allocation process, which would operate similarly to the allocation process as currently set forth in Rule 103B(III) – Equities. Under the proposed Rule, issuers would have the option to select its DMM directly following the procedures set forth in proposed Rule 7.25E(b)(1), which is based on current Rule 103B(III)(A) - Equities with one substantive difference, or delegate the authority to the Exchange to select its DMM as described in proposed Rule 7.25E(b)(2),

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<sup>19</sup> The Exchange does not propose rule text for Rule 7.25E based on current Rule 103B(II)(B) – (H) - Equities because these requirements correlate to quoting requirements depending on the consolidated average daily volume of a security, which would not be applicable on Pillar.

which is based on current Rule 103B(III)(B) - Equities.

The Exchange proposes a substantive difference for proposed Rule 7.25E(b)(1)(A) as compared to current Rule 103B(III)(A)(1) – Equities in that an issuer would be required to select a minimum of four DMMs to interview rather than a minimum of two DMMs to interview. By increasing the minimum number of DMMs that must be interviewed, a larger number of DMMs would have an opportunity to participate in the allocation process, which would lead to an increase in competition without being overly burdensome on the issuer. The increase in number of DMMs to interview would also provide the issuer with more choice in the selection of its assigned DMM. The Exchange further believes that the increase in competition would provide DMMs with a greater incentive to perform optimally.<sup>20</sup>

In addition, because on Pillar, there would be no Floor participants, the Exchange proposes substantive differences for the proposed rule to not include references to Floor-based personnel. Proposed Rule 7.25E(b)(1)(B)(ii), as compared to current Rule 103B(III)(A)(2)(b) - Equities, would not refer to the “individual DMM” assigned to the security because on Pillar, the DMM assigned to a security would be at the ETP Holder level. In addition, proposed Rule 7.25E(b)(2)(A), as compared to current Rule 103B(III)(B)(1) – Equities, would provide that the Exchange Selection Panel would be comprised only of Exchange staff. Proposed Rule 7.25E(b)(3) would require the DMM selected to remain the assigned DMM for one year from the date that the issuer begins

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<sup>20</sup> Proposed Rule 7.25E(b)(1)(A) is based in part on NYSE Rule 103B(III)(A)(1). See also Securities Exchange Act Release No. 69735 (June 11, 2013), 78 FR 36279 (June 17, 2013) (SR-NYSE-2013-39) (Notice of Filing and immediate effectiveness of proposed NYSE rule change to increase number of DMM firms to be interviewed from three to four).

trading on the Exchange, which is based on Rule 103B(III)(B)(2) - Equities.<sup>21</sup>

Proposed Rule 7.25E(b)(4) through (11) would address allocation of specified listings and is based on current Rule 103B(VI) - Equities, with non-substantive differences to re-number the provisions, update rule cross references, and streamline the rule text:

- proposed Rule 7.25E(b)(4) would govern the allocation of a spin-off or related company to an existing listed company and is based on Rule 103B(VI)(A)(1) and (3) - Equities;
- proposed Rule 7.25E(b)(5) would govern the allocation of a warrant issued by a listed company and is based on Rule 103B(VI)(A)(2) - Equities;
- proposed Rule 7.25E(b)(6) would govern the allocation of rights traded on the Exchange and is based on Rule 103B(VI)(A)(4) - Equities;
- proposed Rule 7.25E(b)(7) would govern relistings and is based on Rule 103B(VI)(B) - Equities;
- proposed Rule 7.25E(b)(8) would govern common stock listing after preferred stock and is based on Rule 103B(VI)(C) – Equities;
- proposed Rule 7.25E(b)(9)(A) – (C) would govern listed company

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<sup>21</sup> The Exchange does not propose rule text based on Rule 103B(III)(B)(3) - Equities relating to requirements for a DMM unit to commit extra resources in order to be considered for foreign listings. The Exchange believes that proposed Rule 7.24E(b)(2), which requires market making ability as a factor in assessing whether to approve a Market Maker as a DMM would address any considerations of whether a DMM would have the capability to be a Market Maker in foreign listings.



mergers and is based on Rule 103B(VI)(D)(1) – (4) - Equities;

- proposed Rule 7.25E(b)(10) would govern target stocks and is based on Rule 103B(VI)(E) - Equities; and
- proposed Rule 7.25E(b)(11) would govern the allocation of closed-end management investment companies and is based on Rule 103B(VI)(F) – Equities.

Proposed Rule 7.25E(c) would be titled “Reallocation Process.” Proposed Rules 7.25E(c)(1)(A) – (C) would describe the reallocation process when an issuer requests such reallocation, including Exchange regulatory staff review of any such request. This proposed rule text is based on Rule 103B(IV) - Equities and Supplementary Material .10 to Rule 103B - Equities with non-substantive differences to re-number the rule text and update rule cross-references.

Proposed Rule 7.25E(c)(2)(A) – (D) would describe the reallocation process where a DMM’s performance in a particular market situation was, in the Exchange’s judgment, so egregiously deficient as to call into question the Exchange’s integrity or impair the Exchange’s reputation for maintaining an efficient, fair, and orderly market. The proposed Rule is based on current Rule 103B(III)(V)(A) – (E) – Equities with non-substantive differences to re-number the rule text and update rule cross references.

Proposed Rule 7.25E(d), titled “Allocation Freeze Policy,” would provide that, in the event a DMM unit (1) loses its registration in a security as a result of proceedings under the Rule 8000 or 9000 Series, as applicable, or (2) voluntarily withdraws its registration in a security as a result of possible proceedings under those rules, the DMM would be ineligible to apply for future allocations for the six month period immediately

following the reassignment of the security. The proposed Rule is based on current Rule 103B(III)(VI)(G) - Equities with non-substantive differences to re-number the rule text and update rule cross references.

Proposed Rule 7.25E(e), titled “Allocation Sunset Policy,” would provide that allocation decisions would remain effective with respect to any initial public offering listing company that lists on the Exchange within twelve months of such decision. The proposed Rule is based on current Rule 103B(III)(VI)(H) - Equities with non-substantive differences to re-number the rule text and update rule cross references.

Finally, proposed Rule 7.25E(f) would set forth the criteria for applicants that are not currently DMMs to be eligible to be allocated a security as a DMM, including that the proposed DMM demonstrate that it understands the DMM business, including the needs of issuers, and has an ability and willingness to trade as necessary to maintain fair and orderly markets. Under the proposed Rule, the Exchange would also consider if the proposed DMM or any of its participants is a DMM or market maker on any exchange, the quality of performance of the unit or its participants as a DMM or market maker on such exchange. The Exchange would also consider any action taken or warning issued within the past 12 months by any regulatory or self-regulatory organization against the unit or any of its participants with respect to any capital or operational problem, or any regulatory or disciplinary matter. The proposed Rule is based on current Rule 103B(III)(VI)(I) – Equities with proposed substantive differences not to include rule text that relates to individual DMMs or additional capital requirements, as these would not be applicable to DMMs on Pillar. The Exchange also proposes non-substantive differences to re-number the rule text and update rule cross references.

Rule 7.26E

The Exchange proposes new Rule 7.26E titled “DMM Combination Policy” that would establish the requirement for Exchange approval of certain proposed combinations of DMMs; the contents of a written submission to the Exchange by proponents of the DMM combination addressing certain specific enumerated factors for the Exchange to consider in approving the transaction; and the procedures the Exchange would follow in approving or disapproving a proposed DMM combination. The proposed Rule is based on current Rule 123E – Equities (“DMM Combination Review Policy”) with proposed substantive differences not to include rule text that relates to Floor-based DMM activities as this will not be applicable on Pillar. Because this rule would govern DMM combinations on the Exchange, the Exchange proposes that Rule 123E – Equities would not be applicable to trading on the Pillar trading platform.

Current Rules that would not be Applicable to Pillar

In addition to the rules identified above, the Exchange has identified additional current rules that would not be applicable to trading on Pillar. These rules do not have a counterpart in the proposed Pillar rules, described above, but would be obsolete on the new, fully-automated trading platform.

The main category of rules that would not be applicable to trading on the Pillar trading platform are those that are specific to Floor-based trading. For this reason and the additional reasons noted below, the Exchange proposes that the following Floor-specific rules would not be applicable to trading on the Pillar trading platform:

- Rule 98 – Equities (Operation of a DMM Unit). In the Trading Rules Filing, the Exchange has proposed Rule 6.3E (Prevention of

the Misuse of Material, Nonpublic Information), which is based on NYSE Arca Equities Rule 6.3 and would require that every ETP Holder establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such ETP Holder or persons associated with such ETP Holder. Rule 98(c)(2) – Equities is based on NYSE Arca Equities Rule 6.3 and the remainder of Rule 98 – Equities governs the unique role of DMMs on the Exchange’s cash equities Floor. Because Rule 6.3E is designed to prevent fraudulent and manipulative acts and practices by addressing the potential misuse of material non-public information and because the Exchange would not have Floor-based DMM trading on Pilar, the Exchange proposes that Rule 98 – Equities would not be applicable to trading on Pilar.

- Rule 104A – Equities (DMMs – General).
- Rule 104B – Equities (DMM Commissions).<sup>22</sup>
- Rule 113 – Equities (DMM Unit’s Public Customers).
- Rule 460 – Equities (DMMs Participating in Contests). Because DMMs on the Pilar platform would not have the ability to set prices, the current restrictions on DMMs from participating in proxy contests of a company registered to that DMM would be

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<sup>22</sup> In the Trading Rules Filing, supra note 6, the Exchange has proposed Rule 7.3E, which provides that ETP Holders may not charge fixed commissions, which would be applicable to DMMs.

unnecessary. The Exchange accordingly proposes that Rule 460 – Equities would not be applicable to trading on Pillar.

In addition, the Exchange proposes to delete Rules 99 – Equities, Rule 100 – Equities, and Rule 101 – Equities, all of which are currently marked “Reserved.” The Exchange also proposes to delete Rule 113 Former – Equities (DMMs’ Public Customers) as obsolete.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>24</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 facilitating transactions in securities, 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. The Exchange believes that the proposed rules to support Pillar on the Exchange would remove impediments to and perfect the mechanism of a free and open market because they provide for a complete set of market maker rules to support the Exchange’s transition to a fully automated cash equities trading model on the Pillar trading platform.

Generally, the Exchange believes that the proposed rules would support the Exchange’s transition to a fully automated cash equities trading market with a price-time priority model because they are based on the rules governing market makers of its

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

<sup>24</sup> 15 U.S.C. 78f(b)(5).

affiliated market, NYSE Arca Equities. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system because they are based on the approved rules of another exchange.

More specifically, the Exchange believes that the proposed definitions of Market Maker, Market Maker Authorized Trader and DMM in Rule 1.1E would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed definitions are terms that would be used in the additional rules proposed by the Exchange.

The Exchange also believes that proposed Rules 7.20E and 7.21E, providing for the registration of Market Makers and Market Maker Authorized Traders, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements for an ETP Holder to register as a Market Maker and Market Maker Authorized Trader for trading on the Exchange's Pillar trading platform. The proposed rule change would also promote just and equitable principles of trade by requiring the same registration requirements as have already been approved for NYSE Arca Equities.

The Exchange believes that proposed Rule 7.22E, providing for the registration of a Market Maker other than a DMM in a security, would similarly remove impediments to and perfect the mechanism of a free and open market and a national market system because it would specify the requirements and process for registered Market Makers to register to trade a specific security on the Exchange's Pillar trading platform. The proposed registration process is based on the same process on NYSE Arca Equities and

therefore would promote just and equitable principles of trade by specifying requirements that are based on the approved rules of another exchange.

The Exchange believes that proposed Rules 7.23E, setting forth the obligations and duties of Market Makers, including DMMs, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules that would govern trading on the Exchange that are consistent with the duties and obligations for Market Makers currently in place on the Exchange's affiliate NYSE Arca Equities that have been previously approved by the Commission. For similar reasons, the Exchange believes that proposed Rule 7.23E is also designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by establishing regulatory requirements for Market Maker participation on the Exchange's electronic marketplace that would enhance the quality of its market and thereby support investor protection and public interest goals.

The Exchange believes that proposed Rule 7.24E, setting forth the registration and obligations for DMMs, would remove impediments to and perfect the mechanism of a free and open market and a national market system by maintaining the Exchange's current structure to assign listed securities to DMMs. The Exchange believes that the proposed heightened quoting obligations for DMMs would encourage additional displayed liquidity on the Exchange in Exchange-listed securities. Unlike under current Exchange rules, DMMs on Pillar would not be entitled to the additional benefit of a parity allocation and therefore the proposed obligations are reasonable and are designed to enhance the quality of the Exchange's market for its listed companies. The Exchange further believes that by establishing distinct requirements for DMMs, the proposal is also

designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Exchange believes that proposed Rules 7.25E, setting forth the standards and process for DMM security allocation and reallocation, would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish transparent and objective rules and standards governing the allocation of securities to its DMM that are based on current rules. By adopting the current allocation process set forth in Rule 103B – Equities for DMMs on the Exchange’s all-electronic trading platform, the Exchange believes that it would foster continuity and ensure fair and orderly trading in its listed securities. The Exchange believes that the proposed substantive difference for proposed Rule 7.25E(b)(1)(A) to increase the number of DMMs to be interviewed from two to four would remove impediments to and perfect the mechanism of a free and open market and a national market system because increasing the number of DMMs participating in the issuer allocation process would increase competition to provide services to issuers, and will provide the issuer with more choice in the selection of its DMM.

The Exchange believes that proposed Rules 7.26E, setting forth the DMM combination review policy, would remove impediments to and perfect the mechanism of a free and open market and a national market system by establishing a review process by which the Exchange would continue to review proposed combinations of DMMs in the same manner as it currently does for Floor-based DMMs pursuant to Rule 123E – Equities.

The Exchange further believes that it would remove impediments to and perfect



the mechanism of a free and open market and a national market system to specify which current rules would not be applicable to trading on the Pillar trading platform. The Exchange believes that the proposed legend that would be added to existing rules, “[t]his rule is not applicable to trading on the Pillar trading platform,” would promote transparency regarding which rules would govern trading on the Exchange once it transitions to Pillar. The Exchange has proposed to add this legend to rules that would be superseded by proposed rules or rules that would not be applicable because they concern Floor-based trading.

The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to delete Rules 99 – Equities, Rule 100 – Equities, and Rule 101 – Equities, all of which are currently marked “Reserved,” because it would reduce confusion and promote transparency to delete references to rules that do not have any substantive content. The Exchange further believes that because it is transitioning to a new rule numbering framework, maintaining these rules on a reserved basis is no longer necessary.

Finally, the Exchange believes that deleting Rule 113 Former – Equities as obsolete removes impediments to and perfects the mechanism of a free and open market by simplifying its rulebook and removing confusion that may result from having obsolete rules in the Exchange’s rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange’s jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange’s rulebook. The Exchange also believes that eliminating obsolete rules would not be inconsistent with the public

interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency as to which rules are operable, thereby reducing potential confusion.

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 proposed change is designed to propose rules that would govern Market Makers on the Exchange's new Pillar trading platform, which would be a fully automated cash equities trading market that trades all NMS Stocks and is based on both the rules of NYSE Arca Equities and current rules. The Exchange believes that the proposed rules would promote competition because it would provide for obligations relating to Market Makers that are based on established rules, thereby reducing any potential barriers to entry for Market Makers registered on other exchanges to be approved as a Market Maker on the Exchange when it transitions to Pillar. The Exchange further believes that its proposed rules governing DMMs would not impose any burden on competition that is not necessary or appropriate because the proposed rules are designed to provide continuity for Exchange-listed companies to maintain existing DMMs assigned to their securities, while at the same time proposing obligations for DMMs that are tailored to a price-time automated trading model.

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 up to 90 days (i) as the Commission may designate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-04 on the subject line.

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-2017-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2017-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

Robert W. Errett  
Deputy Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

Additions underlined  
Deletions [bracketed]

Rules of NYSE MKT LLC

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**Equities Rules**

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**RULE 1E DEFINITIONS**

**Rule 1.1E Definitions**

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**Market Maker**

(v) [Reserved]The term “Market Maker” means an ETP Holder that acts as a Market Maker pursuant to Rule 7E.

**Market Maker Authorized Trader**

(w) [Reserved]The term “Market Maker Authorized Trader” or “MMAT” means an Authorized Trader who performs market making activities pursuant to Rule 7E on behalf of a Market Maker.

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**Designated Market Maker or DMM**

(ccc) [Reserved]The terms “Designated Market Maker” and “DMM” mean a registered Market Maker that is subject to additional requirements set forth in Section 2 of Rule 7E for Exchange-listed securities assigned to such DMM.

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## **RULE 7E - EQUITIES TRADING**

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### **Section 2. Market Makers**

#### **Rule 7.20E. [Reserved]Registration of Market Makers**

(a) No ETP Holder will act as a Market Maker in any security (including entering Q orders as defined in Rule 7.31E(j)) unless such ETP Holder is:

(i) registered as a Market Maker in such security by the Exchange pursuant to this Rule, or is a member organization registered as a DMM or SLMM under Exchange Rules as of [one business day before the Pillar transition date]; and

(ii) the Exchange has not suspended or canceled such registration.

Registered Market Makers are designated as dealers on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(b) An applicant for registration as a Market Maker will file an application in writing on such form as the Exchange may prescribe. Applications will be reviewed by the Exchange, which will consider the ETP Holder's capital, operations, personnel, technical resources, and disciplinary history. After reviewing the application, the Exchange will either approve or disapprove the ETP Holder's registration as a Market Maker.

(c) An applicant's registration as a Market Maker will become effective upon receipt by the ETP Holder of notice of an approval of registration by the Exchange. In the event that an application is disapproved by the Exchange, the applicant will have an opportunity to be heard upon the specific grounds for the denial, in accordance with the provisions of the Rule 9500 Series.

(d) The registration of a Market Maker may be suspended or terminated by the Exchange upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rule 7.23E.

(e) Any registered Market Maker, other than a Designated Market Maker, may withdraw its registration by giving written notice to the Exchange. Such withdrawal of registration will become effective on the business day following the Exchange's receipt of the notice. A Market Maker that fails to notify the Exchange of its written notice of withdrawal on the business day prior to such withdrawal may be subject to formal disciplinary action pursuant to the Rule 9200 Series. Subsequent to withdrawal, the ETP Holder will not be permitted to re-register as a Market Maker for a period of six months.

**Rule 7.21E. [Reserved]Obligations of Market Maker Authorized Traders**

(a) General. MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.

(b) Registration of Market Maker Authorized Traders. The Exchange may, upon receiving an application in writing from a Market Maker on a form prescribed by the Exchange, register a person as a MMAT.

(1) MMATs may be officers, partners, employees or other associated persons of ETP Holders that are registered with the Exchange as Market Makers.

(2) To be eligible for registration as a MMAT, a person must successfully complete the Securities Trader Examination (Series 57) and complete a training and certification program sponsored by the Exchange; provided, however, the requirement to complete the Series 57 Examination may be waived by the Exchange if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.

(3) The Exchange may require a Market Maker to provide additional information the Exchange considers necessary to establish whether registration should be granted.

(4) The Exchange may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) Suspension or Withdrawal of Registration.

(1) The Exchange may suspend or withdraw the registration previously given to a person to be a MMAT if the Exchange determines that:

(A) the person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the Rules and procedures of the Exchange;

(B) the person is not properly performing the responsibilities of a MMAT;

(C) the person has failed to meet the conditions set forth under paragraph (b) above;  
or

(D) the Exchange believes it is in the interest of maintaining fair and orderly markets.

(2) If the Exchange suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the Exchange.

(3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request will be submitted on the form prescribed by the Exchange.

**Rule 7.22E. [Reserved]Registration of Non-DMM Market Makers in a Security**

(a) A Market Maker, other than a DMM, may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by submitting a request to the Exchange. Registration in the security will become effective on the first business day following the Exchange's approval of the registration. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider:

- (1) the financial resources available to the Market Maker;
- (2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;
- (3) the Market Maker's operational capability;
- (4) the maintenance and enhancement of competition among Market Makers in each security in which they are registered;
- (5) the existence of satisfactory arrangements for clearing the Market Maker's transactions;
- (6) the character of the market for the security, e.g., price, volatility, and relative liquidity.

(b) A Market Maker's registration in a security may be terminated by the Exchange if the Market Maker fails to enter quotations in the security within five (5) business days after the Market Maker's registration in the security becomes effective.

(c) Reserved.

(d) Reserved.

(e) *Voluntary Termination of Security Registration.* A Market Maker, other than a DMM, may voluntarily terminate its registration in a security by providing the Exchange with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action pursuant to the Rule 9200 Series.



(f) The Exchange may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever, in the Exchange’s judgment, the interests of a fair and orderly market are best served by such action.

(g) An ETP Holder may seek review of any action taken by the Exchange pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker’s registration in a security or securities, in accordance with the Rule 9500 Series.

**Rule 7.23E. [Reserved]Obligations of Market Makers**

(a) General. ETP Holders who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with this Rule. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

(1) A Market Maker will maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade (“Two-Sided Obligation”).

(A) Two-Sided Obligation. For each security in which an ETP Holder is registered as a Market Maker, in satisfaction of the ETP Holder’s Two-Sided Obligation, the ETP Holder will be willing to buy and sell such security for its own account on a continuous basis during Core Trading Hours and will enter and maintain two-sided trading interest that is identified to the Exchange as the interest meeting the Two-Sided Obligation and is displayed in the Exchange Book at all times. Interest eligible to be considered as part of a Market Maker’s Two-Sided Obligation will have a displayed size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the Exchange Book to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange Book that will satisfy this obligation.

(B) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker will adhere to the pricing obligations established by this Rule during Core Trading Hours; provided, however, that such pricing obligations (i) will not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) will be suspended during a trading halt, suspension, or pause, and will not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

- (i) Bid (Offer) Quotations. At the time of entry of bid (offer) interest satisfying the Two-Sided Obligation, the price of the bid (offer) interest will be not more than the Designated Percentage away from the then current National Best Bid (Offer), or if no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) increases (decreases) to a level that would cause the bid (offer) interest of the Two- Sided Obligation to be more than the Defined Limit away from the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) or if the bid (offer) is executed or cancelled, the Market Maker will enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.
- (ii) The National Best Bid and Offer will be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.
- (iii) For purposes of this Rule, the “Designated Percentage” will be 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan (“Tier 1 NMS Stocks”), 28% for Tier 2 NMS Stocks under the Limit Up – Limit Down Plan (“Tier 2 NMS Stocks”) with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks with a price lower than \$1.00, except that between 9:30 a.m. Eastern Time and 9:45 a.m. Eastern Time and between 3:35 p.m. Eastern Time and the close of Core Trading Hours, the Designated Percentage will be 20% for Tier 1 NMS Stocks, 28% for Tier 2 NMS Stocks with a price equal to or greater than \$1.00, and 30% for Tier 2 NMS Stocks with a price lower than \$1.00.
- (iv) For purposes of this rule, the “Defined Limit” will be 9.5% for Tier 1 NMS Stocks, 29.5% for Tier 2 NMS Stocks with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks with a price lower than \$1.00, except that between 9.30 a.m. Eastern Time and 9:45 a.m. Eastern Time and between 3:35 p.m. Eastern Time and the close of Core Trading Hours, the Defined Limit will be 21.5% for Tier 1 NMS Stocks, 29.5% for Tier 2 NMS Stocks with a price equal to or greater than \$1.00, and 31.5% for Tier 2 NMS Stocks with a price lower than \$1.00.
- (C) Nothing in this Rule will preclude a Market Maker from entering trading interest at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.
- (2) A Market Maker will maintain adequate minimum capital in accordance with the provisions of Rule 15c3-1 under the Securities Exchange Act of 1934.

(3) A Market Maker will remain in Good Standing with the Exchange.

(4) A Market Maker will inform the Exchange of any material change in financial or operational condition or in personnel.

(5) A Market Maker will clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.

(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during the Core Trading Hours on all days in which the Exchange is open for business.

(c) If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Exchange in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule. In accordance with Rule 9200 Series, an ETP Holder may seek review of actions taken by the Exchange pursuant to this Rule.

(d) *Temporary Withdrawal.* A Market Maker, other than a DMM, may apply to the Exchange to withdraw temporarily from its Market Maker status in the securities in which it is registered. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the securities to another Market Maker.

**Rule 7.24E. [Reserved]Registration and Obligations of DMMs**

(a) *General.* All Exchange-listed securities will be assigned to a DMM and there will be no more than one DMM per Exchange-listed security.

(b) *Registration.* An ETP Holder must be registered as a Market Maker and approved as a DMM to be eligible to receive an allocation as a DMM under Rule 7.25E.

(1) A member organization approved to operate as a DMM unit under Exchange rules as of [one business day before the Pillar transition date] is automatically approved as a DMM under this Rule 7.24E.

(2) Market Makers that are not registered as a DMM as of [one business day before the Pillar transition date] must file an application in writing in such form as required by

the Exchange to be considered eligible to receive an allocation as a DMM. In reviewing an application, the Exchange may consider the Market Maker's market making ability, capital available for market making, and such other factors as the Exchange deems appropriate, including those set forth in Rules 7.25E(f) and 7.26E. After reviewing the application, the Exchange will either approve or disapprove the applicant Market Maker's registration as a DMM.

(3) An ETP Holder registered as a DMM in a security may also be registered as a Market Maker in such security pursuant to Rule 7.22E(a) only if such ETP Holder maintains information barriers between the trading unit operating as a DMM and the trading unit operating as a non-DMM Market Maker in the same security.

(4) A DMM may apply to withdraw temporarily from its DMM status in one or more assigned securities. The DMM must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange will temporarily reassign the security or securities to another DMM. The DMM temporarily assigned such security or securities will be subject to the obligations set forth in paragraph (b) of this Rule when acting as a temporary DMM in such security or securities.

(5) A DMM may not be registered in a security of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM.

(c) DMM Obligations. In addition to meeting the obligations set forth in Rule 7.23E, DMMs must maintain a bid or an offer at the National Best Bid and National Best Offer ("inside") at least 25% of the day as measured across all Exchange-listed securities that have been assigned to the DMM. Time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. Orders entered by the DMM that are not displayed will not be included in the inside quote calculation.

### **Rule 7.25E. DMM Security Allocation and Reallocation**

(a) Eligibility for Security Allocation and Reallocation.

(1) A security listed on the Exchange as of [one business day before the Pillar transition date] will continue to be allocated to the member organization registered as a DMM in such security, unless reallocated under paragraph (c) of this Rule. Any allocation decisions made under Rule 103B – Equities after [one business day before the Pillar transition date] will be deemed an allocation under paragraph (b) of this Rule.

(2) A security will be allocated to a DMM when such security:

(A) is initially listed on the Exchange; and

(B) must be reassigned under either this Rule or the Exchange’s Company Guide.

(3) A DMM’s eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange.

(4) A DMM is eligible to participate in the allocation process of a listed security if the DMM meets the quoting requirements specified in Rule 7.24E(c) (“DMM obligations”).

(A) If a DMM fails to meet the DMM obligations for a one-month period, the Exchange will issue an initial warning to the DMM, advising it of the poor performance. The DMM must provide a written explanation and articulation of corrective action.

(B) If the DMM fails to meet the DMM obligations for a second consecutive month, the DMM will be ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement (“Penalty Period”). The DMM must satisfy the DMM obligations for the two consecutive months of the Penalty Period.

(C) If a DMM fails to meet the DMM obligations for the two consecutive months of the Penalty Period, the DMM will remain ineligible to participate in the allocation process until it has met DMM obligations for a consecutive two-calendar month period.

(D) The Exchange will review each DMM’s trading on a monthly basis to determine whether the DMM has satisfied its DMM obligations.

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

(1) DMM Selected by the Issuer

(A) The issuer will select a minimum of four DMMs to interview from the pool of DMMs eligible to participate in the allocation process.

(B) Interview Between the Issuer and DMMs

(i) DMMs selected for an interview may provide material to the Exchange, which will be given to the issuer prior to the scheduled interview. Such material may include a corporate overview of the DMM. DMMs are prohibited from giving issuers information about other DMMs or any additional market performance data.

(ii) Within five business days after the issuer selects the DMMs to be interviewed (unless the Exchange has determined to permit a longer time period in a particular case), the issuer will meet with representatives of each of the DMMs. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. In the case of the listing of a structured product, a senior officer of the issuer may be present in lieu of the Corporate Secretary. No more than three representatives of each DMM may participate in the meeting. Meetings will normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere.

(iii) Teleconference meetings will be permitted at the request of non-U.S. issuers, or for U.S. issuers in compelling circumstances.

(iv) Following its interview, a DMM may not have any contact with an issuer. If an issuer has a follow-up question regarding any DMM(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the DMM(s) to which the question pertains and will provide any available information received from the DMM(s) to the listing company

(v) Within two business days of the issuer's interviews with the DMMs, the issuer will select its DMM in writing, signed by a senior official of the rank of Corporate Secretary or higher, or in the case of a structured product listing, a senior officer of the issuer, duly authorized to so act on behalf of the company. The Exchange will then confirm the allocation of the security to that DMM, at which time the security will be deemed to have been so allocated. An issuer may request an extension from the Exchange if the issuer is unable to complete its selection within the specified period.

## (2) DMM Selected by the Exchange

(A) If the issuer delegates authority to the Exchange to select its DMM, an Exchange Selection Panel ("ESP") will be convened to select a DMM based on a review of all information available to the issuer. The ESP will consist of three Exchange employees designated by the CEO of the Exchange. Such issuer may choose to submit a letter to the ESP indicating its preference and supporting justification for a particular DMM. The ESP may consider such letter in performing its duty to select a DMM for the issuer. The ESP may also interview one or more individuals associated with a DMM.

(B) ESP selection of the DMM will be made by majority vote with any tie votes being decided by the CEO of the Exchange or his or her designee. The Exchange will notify the DMM and the issuer.

(3) The DMM selected to receive the security allocation will be required to remain the assigned DMM for one year from the date that the issuer begins trading on the Exchange.

- (4) Spin-Off or Related Company. If a listing company is a spin-off of or a company related to a listed company, the listing company may remain with the DMM registered in the related listed company or be allocated through the allocation process under paragraph (b) of this Rule. The Exchange will honor a request by a spin-off company or company related to a listed company to have its DMM selected by the Exchange under paragraph (b)(2) of this Rule instead of being allocated to the DMM that is its listed company's DMM. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive the spin-off and listing of related companies.
- (5) Warrants. A warrant issued by a listed company and traded on the Exchange is allocated to the DMM registered in the underlying security of the listed company. Upon request by the issuer, the warrant may be allocated through the allocation process under paragraph (b) of this Rule.
- (6) Rights. Rights traded on the Exchange are not subject to the provisions of this Rule and are assigned, when issued, to a DMM by the Exchange.
- (7) Relistings. Relistings are treated as new listings and will be allocated through the allocation process under paragraph (b) of this Rule. If the relisting chooses to have its DMM selected by the Exchange under paragraph (b)(2) of this Rule and requests not to be allocated to its former DMM, such request will be honored. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.
- (8) Common Stock listing after Preferred Stock. When a company applies to list an issue of common stock after having listed a preferred issue, the common stock is referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.
- (9) Listed Company Mergers. When two Exchange listed companies merge, the merged company may select one of the DMMs trading the merging companies without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to be selected pursuant to this paragraph in its capacity as the DMM for one of the two pre-merger companies, but will not be eligible to participate in the allocation process if the post-merger listed company requests that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule.
- (A) If the merging company chooses to have its DMM selected by the Exchange under paragraph (b)(2) of this Rule, the company may not request that the Exchange not allocate the security to one of the DMMs trading the merging

company. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

(B) In situations involving the merger of a listed company and an unlisted company, the merged company may choose to remain registered with the DMM that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to be selected pursuant to this paragraph in its capacity as the DMM for the pre-merger listed company, but will not be eligible to participate in the allocation process if the post-merger listed company requests that the matter be referred for allocation through the allocation process pursuant to paragraph (b) of this Rule.

(C) If the unlisted company chooses to have its DMM selected by the Exchange pursuant to paragraph (b)(2) of this Rule, the company may not request that the Exchange exclude from consideration the DMM that had traded the listed company. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

(10) Target Stock.

(A) If a tracking (“target”) stock(s) is issued by a listed company, the listed company may choose to have its newly-issued tracking stock(s) stay with the DMM registered in the listed company that issued the tracking stock(s) or be referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

(B) If the listed company chooses to have the DMM of the tracking stock(s) selected by the Exchange pursuant to paragraph (b)(2) of this rule, the DMM registered in such security prior to a separate listing will remain registered in such security after its separate listing, unless the listing company requests that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule. In such a case, the Exchange will honor the company’s request not to be allocated to the DMM that had traded the target stock. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

(11) Closed-End Management Investment Companies (“Funds”). Funds listing on the Exchange will be subject to the allocation process under paragraph (b) of this Rule. If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM for those



subsequently listed funds or it may select a different DMM from the group of eligible DMMs that the issuer interviewed in the allocation process for its initial fund. The fund may also delegate the selection of its DMM to the Exchange if it so chooses under paragraph (b)(2) of this Rule.

(A) If a DMM is ineligible from participating in an allocation at the time of a subsequent new Fund listing (within the designated nine-month period), that DMM will not be included for consideration for subsequent listings.

(B) In any case where all the Funds in a group of closed-end management investment companies are being listed concurrently with a common investment adviser or investment advisers who are “affiliated persons” pursuant to the alternate criteria in Section 101 of the Exchange’s Company Guide (for groups where one or more Funds do not meet the ordinary requirement for public market value of \$20,000,000), the entire group should be allocated to one DMM, unless there are factors, such as the number of funds in the group, the types of funds, or the relative values of the funds, that the Exchange believes make allocation to more than one DMM appropriate.

(c) *Reallocation Process.*

(1) A listed company may file with the Corporate Secretary of the Exchange a written notice (the “Issuer Notice”), signed by the company’s chief executive officer, that it wishes to request a change of DMM. The Issuer Notice will indicate the specific issues prompting this request. The Corporate Secretary will provide copies of the Issuer Notice to the DMM currently registered in the security, the Exchange’s listings staff, and Exchange regulatory staff.

(A) Exchange regulatory staff will review the Issuer Notice and any DMM response and may request a review of the matter by the Exchange’s Regulatory Oversight Committee. No change of DMM may occur until Exchange regulatory staff makes a final determination that it is appropriate to permit such change. In making such determination, Exchange regulatory staff may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a DMM to engage in conduct that is illegal or violates Exchange rules. Notwithstanding Exchange regulatory staff review of any matter raised during the process described herein, the Exchange may at any time take any regulatory action that it may determine to be warranted.

(B) At the completion of the regulatory staff review, the security will be put up for allocation under paragraph (b) of this Rule.

(C) No negative inference for allocation or regulatory purposes is to be made against a subject DMM in the event that a DMM is changed under paragraph (c) of this

Rule. Similarly, the DMM will not be afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.

(2) In any instance where a DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market, the CEO or his or her designee may immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer specifying the reasons for the initiation of the proceeding.

(A) Following this decision, if the CEO or his or her designee makes a final determination that a security should be referred for reallocation, the CEO or his or her designee will, in his or her expert business judgment, be responsible for reallocating the security to the one of the remaining DMMs eligible for allocation.

(B) The CEO or his or her designee will then make a final determination as to which one or more of the DMM's security will be referred for reallocation. All determinations made by the CEO or his or her designee will be communicated in writing to the DMM, with a statement of the reasons for such determinations.

(C) A decision by the Exchange that one or more securities should be reallocated will be final, subject to the DMM right to have such decision reviewed by the Exchange's Board of Directors.

(D) In the event that a DMM asserts its right to review, no reallocation may occur until the Board of Directors completes its review.

(d) Allocation Freeze Policy. If a DMM:

(1) loses its registration as a DMM as a result of proceedings under the Rule 8000 or 9000 Series, as applicable; or

(2) voluntarily withdraws its registration in a security assigned to it as a result of possible proceedings under those rules, the DMM will be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security ("Allocation Prohibition").

(A) Following the Allocation Prohibition, a second six-month period will begin during which a DMM may participate in the allocation process under Rule 7.25E(b), if Exchange regulatory staff determines that such DMM may participate in such allocation process. In making this determination, Exchange regulatory staff will consider the DMM's particular situation and may consider whether the DMM has taken one or more steps:

(A) supplying additional manpower/experience;

(B) making changes in professional staff;

(C) attaining appropriate dealer participation;

(D) enhancing back-office staff; and

(E) implementing more stringent supervision/new procedures.

(e) Allocation Sunset Policy. Allocation decisions will remain effective with respect to any initial public offering listing company that lists on the Exchange within 12 months of such decision. In situations in which the selected DMM merges or is involved in a combination within the 12-month period, the company may choose whether to stay with the selected DMM, or be referred to allocation. If a listing company does not list within twelve months, the matter will be referred for allocation through the allocation process under paragraph (b) of this Rule.

(f) Criteria for applicants that are not currently DMMs to be eligible to be allocated a security as a DMM.

(1) Since an entity seeking to enter the DMM business does not have a history directly comparable to that of existing DMMs, the Exchange considers the following criteria with respect to such ETP Holders.

(A) The proposed DMM must demonstrate that it understands the DMM business, including the needs of issuers.

(B) The proposed DMM must demonstrate an ability and willingness to trade as necessary to maintain fair and orderly markets. If the proposed DMM or any of its participants is currently a DMM or market maker on any exchange, performance during the prior 12 months, as evidenced by available data maintained by such exchange that evaluates the quality of performance of the unit or its participants as a DMM or market maker on such exchange, will be considered by the Exchange.

(C) Other factors that will be considered by the Exchange include any action taken or warning issued within the past 12 months by any regulatory or SRO against the unit or any of its participants with respect to any capital or operational problem, or any regulatory or disciplinary matter.

#### **Rule 7.26E. DMM Combination Review Policy**

(a) No DMM will complete a “proposed combination” (as defined below in paragraph (b) of this rule) with one or more other DMMs unless the combination has been approved by the Exchange.

(b) For purposes of this rule, a “proposed combination” means:

(1) a transaction in which two or more DMMs agree to merge or otherwise combine their businesses, with the result that the total number of existing independent DMMs will be reduced;

(2) two or more DMMs agree to combine their businesses with the result that the existing number of DMMs will not be reduced, but one or more of the surviving units is substantially reduced in size; or

(3) a DMM merges or otherwise combines with a non-DMM business resulting in a change of control of the existing DMM.

(c) Proponents of a DMM combination must make a written submission to the Office of the Corporate Secretary of the Exchange, discussing all the factors for review pursuant to subparagraph (d) below. The written submission should also address and discuss:

(1) performance in any securities received through previous combinations or transfers of registrations during the preceding two years;

(2) whether the proposed combined DMM will have a real-time surveillance system that monitors DMM trading and uses exception alerts to detect unusual trades or trading patterns;

(3) whether the proposed combined DMM will have disaster recovery facilities for its computer network and software; and

(4) whether the combined DMM will designate a senior staff member to be responsible for reviewing DMM performance data, with specific procedures for correcting any deficiencies identified.

(d) The Exchange will consider the following criteria in its review of a proposed combination:

(1) the ability of the DMM resulting from the transaction to comply with Exchange rules, including Rules 7.23E and 7.24E;

(2) whether the proposed combination minimizes both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole;

(3) whether the proposed combination maintains or increases operational efficiencies;

(4) the surviving DMM's commitment to the Exchange market, including but not limited to whether the constituent DMM:

(A) work to support, strengthen and advance the Exchange, its market and its competitiveness in relation to other markets;

(B) participate upon request in the Exchange's marketing seminars, sales calls and other marketing initiatives seeking to attract order flow and new listings;

(C) accept innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational;

(D) engage in efforts to streamline the efficiency of its own operations and its competitive posture; and

(5) The effect of the proposed combination on overall concentration of DMMs.

(e) Where a proposed combination involves an organization that is not a DMM, consideration will entail an assessment of whether the organization will work to support, strengthen and advance the Exchange, and its competitiveness in relation to other markets.

(f) The Exchange will approve or disapprove a proposed combination within 10 business days based on its assessment of the criteria pursuant to subparagraph (d) above and, in the case of a proposed combination involving a non-DMM, its assessment of the additional criteria pursuant to subparagraph (e) above. The Exchange reserves the right to extend its review process if the information submitted by the proponents of the DMM combination is inadequate or requires additional time to review to enable the Exchange to reach a decision.

(1) The Exchange will approve a proposed combination if the proposed combination satisfies the criteria set forth in paragraph (d) of this Rule, and if the Exchange determines that the proposed combination would:

(A) not create or foster concentration in the DMM business detrimental to the Exchange and its markets;

(B) foster competition among DMMs; and

(C) enhance the performance of the constituent DMM and the quality of the markets in the securities involved.

(g) The Exchange may condition its approval upon compliance by the resulting DMM with any steps the Exchange may specify to address any concerns it may have in regard to considerations of the above criteria.

(h) In any instance where the Exchange does not approve a proposed DMM combination, the proponents of such proposed combination have a right to have such decision reviewed by the Exchange's Board of Directors.

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## **Rule 98 - Equities. Operation of a DMM Unit**

*This Rule is not applicable to trading on the Pillar trading platform.*

### (a) Applicability

- (1) The provisions of this rule shall apply to all member organizations seeking to operate a DMM unit at the Exchange and any approved person that may provide services to a DMM unit.

### (b) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

- (1) "DMM unit" means a trading unit within a member organization that is approved pursuant to Rule 103 - Equities to act as a DMM unit.
- (2) "DMM securities" means any securities allocated to the DMM unit pursuant to Rule 103B - Equities or other applicable rules.
- (3) "DMM rules" means any rules that govern DMM or DMM unit conduct or trading.
- (4) "Floor-based non-public order" means any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, and order information in Exchange systems that is not available via NYSE OpenBook®.
- (5) "Investment banking department" means any department or division, whether or not specifically identified as such, that performs any investment banking services on behalf of a member organization.
- (6) "Research department" means any department or division, whether or not specifically identified as such, that is responsible for preparing the substance of a research report on behalf of a member organization.
- (7) "Related products" means any derivative instrument that is related to a DMM, including options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or any other instrument that is exercisable into or whose price is based upon or derived from a security listed or traded at the Exchange.

### (c) Operation of a DMM unit.

- (1) A member organization will be permitted to operate a DMM unit provided that the member organization has obtained prior written approval from the Exchange.
- (2) A member organization seeking approval to operate a DMM unit pursuant to this rule must maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, (i) to prevent the misuse of material, non-public information by such member organizations or persons associated with such member organization and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules. For purposes of this Rule, conduct constituting the misuse of material, non-public information includes, but is not limited to:
  - (A) Trading in any securities issued by a corporation, or in any related product, while in possession of material-non-public information concerning the issuer; or
  - (B) Trading in a security or related product, while in possession of material non-public information concerning imminent transactions in the security or related product; or
  - (C) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related product for the purpose of facilitating the possible misuse of such material, non-public information.
- (3) Restrictions on trading for member organizations operating a DMM unit.
  - (A) A member organization shall protect against the misuse of Floor-based non-public order information. Only Floor-based employees of the DMM unit and individuals responsible for the direct supervision of the DMM unit's Floor-based operations may have access to Floor-based non-public order information.
  - (B) While on the Trading Floor of the Exchange, employees of the DMM unit:
    - (i) except as provided for in Rule 36.30, may trade only DMM securities and only on or through the systems and facilities of the Exchange as permitted by Exchange rules.
    - (ii) except as provided for in Rules 36.30, may not communicate with individuals or systems responsible for making trading decisions for related products or for away-market trading in their assigned DMM securities.
    - (iii) shall not have access to customer information or the DMM unit's position in related products.
  - (C) When a Floor-based employee of a DMM unit moves to a location off of the Trading Floor of the Exchange or if any person that provides risk management

- oversight or supervision of the Floor-based operations of the DMM unit is aware of Floor-based non-public order information, he or she shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or related products, or (3) use any such information in connection with making trading decisions in DMM securities in away markets or related products.
- (D) A DMM unit may make available to a Floor broker associated or affiliated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.
- (4) Any proprietary interest entered into Exchange systems by the DMM unit in DMM securities must be identifiable as DMM unit interest, unless such proprietary interest is for the purposes of facilitating the execution of an order received from a customer (whether the DMM's own customer or the customer of another broker-dealer) and is on a riskless principal basis, or on a principal basis to provide price improvement to the customer (a "customer-driven order"). A DMM unit must use a unique mnemonic that identifies to the Exchange its customer-driven orders in DMM securities. A mnemonic used to identify a DMM's customer-driven orders in DMM securities may not be used for trading activity at the Exchange in DMM securities that are not customer-driven orders, but may be used for trading activities in securities not assigned to the DMM.
- (5) The member organization must provide the Exchange with real-time net position information in DMM securities by the DMM unit and any independent trading unit of which it is part at such times and in the manner prescribed by the Exchange.
- (6) The DMM unit may not operate as a specialist or market maker on the Exchange or the NYSE MKT LLC equities or options trading floors in related products, unless specifically permitted in Exchange rules.
- (7) The member organization shall maintain information barriers between the DMM unit and any investment banking or research departments of the member organization. No DMM or DMM unit may be directly supervised or controlled by an individual associated with an approved person or the member organization who is assigned to any investment banking or research departments.
- (d) The rules, fees or credits applicable to DMM quoting or trading activity will apply only to a DMM unit's quoting or trading in its DMM securities for its own account that has been identified as DMM interest. Customer-driven orders for the account of a DMM unit that have not been identified as DMM interest will not be subject to DMM rules or be eligible for any fees or credits applicable to DMM quoting or trading activity and may not be aggregated with interest that has been identified as DMM interest for purposes of



any DMM-related fees or credits or DMM quoting obligations specified in Rule 104(a) - Equities.

(e) Failure to Maintain Confidentiality

(1) In the event that a DMM unit receives from the member organization or approved person non-public information about a security that is allocated to the DMM unit, that DMM unit shall promptly communicate that fact to the person responsible for compliance with the securities laws and regulations within the DMM unit (compliance officer) and shall seek a determination from such compliance officer as to whether the DMM should cease acting as a DMM in the security involved.

(A) If the compliance officer determines that the DMM should temporarily cease acting as a DMM in the security:

(i) The DMM shall transfer the responsibility to act as a DMM in such security to another member who is registered as a DMM and who is not in possession of the information so received;

(ii) The compliance officer shall immediately notify the Exchange when (1) a determination is made that another DMM should act as a DMM in such security, and (2) when the compliance officer determines that the DMM who regularly handles the security can resume acting as a DMM for that security.

(iii) The compliance officer shall be responsible for determining when it is appropriate for the DMM to resume acting as DMM in the security involved.

(iv) The compliance officer shall take such actions as may be necessary to ensure that the transfer of the security to another member who is registered as a DMM is conducted in a "neutral" manner so that there is no communication of the information that had been received by the DMM who, as a consequence of receiving such information, was required to cease acting as a DMM for that security.

(v) The compliance officer shall maintain a written record of each request from a DMM for a determination of whether to cease acting as a DMM in a security. Such record shall include a description of the information received by the DMM, an indication when and from whom the information was received, when the compliance officer was consulted on the matter, when the compliance officer made a determination on the matter, the determination of whether to cease acting as a DMM in a security, the basis for such determination, the time at which the DMM resumed acting as a DMM in the security involved, and such other information as the Exchange may from time to time require.

## (f) Reporting Obligations

- (1) The member organization or approved person associated with a DMM unit shall report to the Exchange, on a monthly "after the fact" basis and on such form and in such specific detail as the Exchange may prescribe, information regarding material investment banking activities in which it has been engaged (e.g., underwriting, tender offers, mergers, acquisitions, recapitalizations, etc.), and material research reports, recommendations, etc., pertaining to any security that has been allocated to a DMM unit pursuant to Rule 103B - Equities.
- (2) A DMM unit shall report to the Exchange on a monthly "after the fact" basis and on such form and in such specific detail as the Exchange may prescribe, information regarding determinations pursuant to section (e)(1) of this Rule by a compliance officer that a DMM shall not be required to cease acting as a DMM in a security.
- (3) A DMM unit shall promptly report to the Exchange any failure to maintain the confidentiality of Floor-based non-public order information, as required by section (c) of this Rule.
- (4) In the event a DMM unit, member organization, or approved person becomes aware of any trading activity that may be a result of a breach of (i) the DMM unit's internal controls or surveillances as required by section (c) of this Rule, or (ii) the requirement to maintain the confidentiality of Floor-based non-public order information, as required by section (c) of this Rule, the DMM unit, member organization, or approved person shall:
  - (A) Promptly conduct an internal investigation into any such actual or potential breach to determine whether such breach occurred and if there was a breach, how such breach occurred;
  - (B) Promptly take any and all necessary remedial measures to prevent and detect such breaches from recurring; and
  - (C) On a quarterly basis, for any ongoing internal investigation required by section (f)(4)(A) of this Rule, report in writing to the Exchange:
    - (i) The commencement of the internal investigation;
    - (ii) The quarterly progress of each open investigation (report by the 15th day of the month following the quarter); and
    - (iii) The completion of the investigation, including the methodology and results of the investigation, remedial actions taken, any internal disciplinary action taken, and any referral of the matter to the Exchange, another self-regulatory organization, the Securities and Exchange Commission or another Federal agency.

(g) Breach

Any failure by the DMM unit to maintain confidentiality of Floor-based non-public order information or any breach of any internal controls established to protect such information, may result in the imposition of appropriate regulatory sanctions, including a withdrawal of the registration of one or more securities of the DMM unit or the withdrawal of approval to operate a DMM unit.

**Rule 98A - Equities. Restrictions on Persons or Parties Affiliated with A DMM Unit**

*This Rule is not applicable to trading on the Pillar trading platform.*

A DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM unit's member organization.

**Designated Market Makers' ("DMMs") and Member Organizations' Dealings on the Floor (Rules 99 - Equities—114 - Equities)**

**[Rule 99 - Equities. Reserved**

Reserved.

**Rule 100 - Equities. Reserved**

Reserved.

**Rule 101 - Equities. Reserved**

Reserved.]

**Rule 103 - Equities. Registration and Capital Requirements of DMMs and DMM Units**

*This Rule is not applicable to trading on the Pillar trading platform.*

(a)(i) No member organization shall act as a DMM unit on the Exchange in any security unless such member organization is registered as a DMM unit in such security with the Exchange and unless the Exchange has approved of the member organization so acting as a DMM unit and has not withdrawn such approval.

(b)(i) To register as a DMM unit, a member organization shall file an application in writing in such form as required by the Exchange. In reviewing an application, the Exchange may consider the member organization's market making ability, capital available for market making, and such other factors as the Exchange deems appropriate.

After reviewing the application, the Exchange shall either approve or disapprove the applicant member organization's registration as a DMM unit.

(ii) An existing specialist member organization may continue to operate as a DMM unit without submitting an application to the Exchange.

(c)(i) Before approval of registration as a DMM, an individual is required to be a member of the Exchange and pass an examination prescribed by the Exchange, unless such examination is waived by the Exchange. Applications for this examination should be submitted to the Exchange.

(ii) A member previously qualified as a specialist may act as a DMM without being required to pass an examination prescribed by the Exchange.

(iii) DMMs are permitted to conduct business for the DMM unit on the Floor of the Exchange, such as entering orders and quotations for the account of the DMM unit. DMMs may conduct business only on behalf of the DMM unit with which the DMM is associated.

(d) As a condition of a member organization's registration as a DMM unit in one or more securities the Exchange may at any time require such DMM unit to act as an odd-lot dealer in such securities as provided under the rules of the Exchange.

(e) All DMM units registered at the Exchange will be required to pay such registration fees as are determined and made known by the Exchange.

(f) Relief DMMs. -

(i) Any member registered as a regular DMM must either (1) be associated with other members also registered as regular DMMs in the same securities, either through a partnership or a member corporation or a joint account, and arrange for at least one member of the group to be in attendance during the hours when the Exchange is open for business, or (2) arrange for the registration by at least one other member as relief DMM, who would always be available, in the regular DMM's absence, to perform the activities of a regular DMM and to service the market, so that there would be no interruption of the continuity of service during the hours when the Exchange is open for business.

(ii) The same obligations and responsibilities for the maintenance and stabilization of markets which rest upon regular DMMs, rest also upon relief DMMs.

(iii) A member previously registered as a relief specialist may serve as a relief DMM.

••• *Supplementary Material:*

**.10 Temporary Reallocation of Securities.** The Chief Regulatory Officer or his or her designee and two non-DMM Executive Floor Governors or if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors based on length of consecutive service as a Floor Governor at the time of any action covered by this rule, acting by a majority shall have the power to reallocate temporarily any security on an emergency basis to another location on the Exchange whenever in their opinion such reallocation would be in the public interest.

The member to whom a security has been temporarily reallocated under the provisions of this Rule will be registered as the regular DMM therein until the Chief Regulatory Officer or his or her designee and two non-DMM Executive Floor Governors determine that the security may be returned to the original DMM unit or has been reallocated pursuant to Exchange rules.

**.11 Time Tracking Requirements**

(A) Each DMM and DMM unit shall keep and provide the Exchange with records in such format as required by the Exchange indicating (a) the identity of DMMs and the personnel of the DMM unit available on the Floor to work with DMMs; (b) the times during which each DMM acts in his or her capacity as DMM on the Floor; and (c) the times during which personnel available on the Floor act in the capacity of a clerk to a DMM on the Floor.

(B) Each DMM and the personnel of the DMM unit available on the Floor to work with the DMM shall input the required personnel identifying information into the Exchange's IDTrack system at any post and panel in which each DMM acts in his or her capacity as DMM on the Floor and in which personnel available on the Floor act in the capacity of a clerk to a DMM on the Floor.

(C) Each DMM and the personnel of the DMM unit available on the Floor to work with the DMM in the capacity of a clerk shall sign and certify at the end of each trading day a daily report identifying the times that the DMM and the clerk logged into the IDTrack system, the registered securities in which the DMM and the clerk worked on that particular day, and the time that the DMM and the clerk logged out of the IDTrack system. The signatures of the DMM and the clerk will certify the accuracy of the daily reports, and the signatures will be provided by the DMM and the clerks in the manner required by the Exchange.

**DMM Capital Requirements**

**.20 Minimum Capital Requirements**

(a)(i) Each DMM unit must maintain tentative net capital in an amount which shall be the greater of (i) \$1,000,000 or (ii) an amount sufficient to assume a position of sixty trading

units of each security in which such DMM is registered. For purposes of this Rule, the amount sufficient to assume a position in sixty trading units shall be equal to 15% of the current market value of the position.

- (ii) FINRA must be informed immediately by a DMM unit whenever it is unable to comply with the requirements set forth in this Rule, as applicable.
- (iii) The term "tentative net capital" means net capital, computed in accordance with Securities Exchange Act Rule 15c3-1 before application of haircuts and undue concentration charges.
- (iv) In the event that two or more DMM units are associated with each other and deal for the same DMM account, the capital requirements enumerated in this Rule shall apply to such DMM units as one unit, rather than to each DMM unit individually. Any joint account must be approved by the Exchange.
- (v) For each security in which a DMM is registered which is principally traded or priced in a U.S. marketplace other than the Exchange, such DMM shall maintain tentative net capital sufficient to assume a position of twenty trading units of such security.
- (vi) Every DMM who enters into a financing arrangement with any creditor either for the purpose of meeting the requirements imposed by this rule or for the purpose of financing any DMM transactions, including arrangements made pursuant to Equities Rule 462, shall inform the Exchange of the name of the creditor and the terms of the arrangement. Each DMM and each member organization which is a party to any such financing arrangement shall notify the Exchange of any amendment, cancellation or expiration of such arrangement at least 72 hours in advance (or such shorter period as is reasonable in the circumstances if the financial condition of the member organization would otherwise be substantially impaired). In addition to such notice and the notifications and reports otherwise required by the Exchange, the Exchange must be informed immediately by telephone (and thereafter by confirmation in writing) of the intention to issue a margin call.
- (vii) DMMs must be able to meet the requirements of this Rule without taking into consideration the capital required to carry or finance investment accounts.
- (viii) Each DMM or DMM unit subject to this Rule shall promptly notify the Exchange in writing if the tentative net capital of such DMM or DMM unit, after deduction of all capital withdrawals including maturities, if any, scheduled during the next six months, falls below 125% of the minimum dollar amount required hereby (the "early warning level").
- (ix) In the event the tentative net capital of any DMM or DMM unit subject to this Rule falls below the early warning level, such DMM or DMM unit shall attempt to reach a written agreement with the Exchange on a plan for raising the DMM's or

DMM unit's capital to an appropriate level or taking other appropriate action. In the event of the failure to reach such agreement within five business days following the initial response or involvement of the Exchange, the Exchange may take such action as it shall decide is appropriate.

(b) Maintaining a Fair and Orderly Market.— Solely for the purpose of maintaining a fair and orderly market, the Exchange may, for a period not to exceed 5 business days, allow a DMM unit to continue to operate despite such DMM unit's non-compliance with the provisions of the minimum requirements of this Rule.

**.21 Relief DMMs.—**

(a) A full time relief DMM, i.e., one who may be called upon to act as a relief DMM for an entire business day, shall have no financial requirement so long as his or her dealings while relieving the regular DMM are effected for the account of the regular DMM. A full time relief DMM must satisfy the financial requirements of this Rule with respect to the securities in which he or she is acting as a relief DMM if the relief DMM, or the DMM unit providing the relief DMM, participates in the profit and loss of the dealings by the relief DMM.

(b) There is no requirement with respect to a member acting as a part-time relief DMM, i.e., one who may be called upon to act as a relief DMM for less than the entire business day, usually for lunch periods, etc. Dealings effected by a part-time relief DMM while relieving the regular DMM must be made for the account of the regular DMM whom he or she is relieving.

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**Rule 103B - Equities. Security Allocation and Reallocation**

*This Rule is not applicable to trading on the Pillar trading platform.*

**I. ASSIGNMENT OF SECURITIES**

Securities are allocated to a qualified DMM unit when: (1) a security is to be initially listed on the Exchange; and (2) a security previously assigned to a DMM member organization must be re-assigned pursuant to this Rule or the Exchange's Company Guide.

**II. ELIGIBILITY FOR ALLOCATION**

(A) A DMM unit is eligible to participate in the allocation process of a listed security when the DMM unit meets the quoting requirements for "Less Active" and "More Active" securities.

- (B) For purposes of Section II of Rule 103B - Equities, "Less Active Security" shall mean any listed security that has a consolidated average daily volume of less than one million shares per calendar month.
- (C) For purposes of Section II of Rule 103B - Equities, a "More Active Security" shall mean any listed security that has a consolidated average daily volume equal to or greater than one million shares per calendar month.
- (D) For Less Active Securities a DMM unit must maintain a bid and an offer at the National Best Bid ("NBB") and National Best Offer ("NBO") (collectively herein "NBBO") for an aggregate average monthly NBBO of 10% or more during a calendar month.
- (E) For More Active Securities a DMM unit must maintain a bid and an offer at the NBBO for an aggregate average monthly NBBO of 5% or more during a calendar month.
- (F) A DMM unit will be deemed to have met its quoting requirements for Less Active and More Active securities for the "Trading Days" in a calendar month pursuant the provisions of subsection (H) below.
- (G) For purposes of Section II of Rule 103B - Equities, "Trading Day" shall mean any day on which the Exchange is scheduled to be open for business. Days on which the Exchange closes prior to 4:00 p.m. (Eastern Time) for any reason, which may include any regulatory halt or trading halt, shall be considered a Trading Day.
- (H) The Exchange will determine for each security:
- (1) the "Daily NBB Quoting Percentage" by determining the percentage of time a DMM unit has at least one round lot of displayed interest in an Exchange bid at the National Best Bid during each Trading Day for a calendar month;
  - (2) the "Daily NBO Quoting Percentage" by determining the percentage of time a DMM unit has at least one round lot of displayed interest in an Exchange offer at the National Best Offer during each Trading Day for a calendar month;
  - (3) the "Average Daily NBBO Quoting Percentage" for each Trading Day by summing the "Daily NBB Quoting Percentage" and the "Daily NBO Quoting Percentage" then dividing such sum by two;
  - (4) the "Monthly Average NBBO Quoting Percentage" for each security by summing the security's "Average Daily NBBO Quoting Percentages" for each Trading Day in a calendar month then dividing the resulting sum by the total number of Trading Days in such calendar month; and



(5) for the total Less Active Securities (More Active Securities) assigned to a DMM unit, the Exchange will determine the "Aggregate Monthly Average NBBO Quoting Percentage" by summing the Monthly Average NBBO Quoting Percentages for each Less Active Security (More Active Security) assigned to a DMM unit, then dividing such sum by the total number of Less Active Securities (More Active Securities) assigned to such DMM unit.

(I) A DMM unit's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange.

(J) Failure to Meet Performance Standards

(1) If a DMM unit fails to meet the requirements of Rule 103B - Equities, Section II(D) and (E) for a one-month period, the Exchange will issue an initial warning letter to the unit, advising it of its poor performance. The DMM unit shall provide in writing an explanation and articulation of corrective action.

(2) If the DMM unit fails to meet the requirement of Rule 103B - Equities, Section II(D) and (E) for a second consecutive month, the DMM unit will be ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement ("Penalty Period"). The DMM unit must satisfy the quoting requirement for the two consecutive months of the Penalty Period.

(3) In the event a DMM unit fails to meet its quoting requirements for the two consecutive months of the Penalty Period, the DMM unit will remain ineligible to participate in the allocation process until it has met the quoting requirement for a consecutive two calendar month period.

(4) The Exchange will review each DMM unit's trading on a monthly basis to determine whether the DMM unit has satisfied its quoting requirement.

### **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) The issuer shall select a minimum of two DMM units to interview from the pool of DMM units eligible to participate in the allocation process.

(2) Interview Between the Issuer and DMM Units

- (a) DMM units selected for an interview may provide material to the Exchange which will be given to the issuer prior to the scheduled interview. Such material may include a corporate overview of the DMM unit and the trading experience of the designated DMM. DMM units are prohibited from giving issuers information about other DMM units or any additional market performance data.
- (b) Within five business days after the issuer selects the DMM units to be interviewed (unless the Exchange has determined to permit a longer time period in a particular case), the issuer shall meet 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. In the case of the listing of a structured product, a senior officer of the issuer may be present in lieu of the Corporate Secretary. No more than three representatives of each DMM unit may participate in the meeting, each of whom must be employees of the DMM unit, and one of whom must be the individual DMM who is proposed to trade the company's security. If the DMM is unavailable to appear in person, a telephone interview with that DMM is acceptable. Meetings shall normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere.
- (c) Teleconference meetings will be permitted at the request of non-U.S. issuers, or for U.S. issuers in compelling circumstances.
- (d) Following its interview, a DMM unit may not have any contact with an issuer. If an issuer has a follow-up question regarding any DMM unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the DMM unit(s) to which the question pertains and will provide any available information received from the DMM unit(s) to the listing company

### (3) Issuer's Selection of DMM Unit

- (a) Within two business days of the issuer's interviews with the DMM units, the issuer shall select its DMM unit in writing, signed by a senior official of the rank of Corporate Secretary or higher, or in the case of a structured product listing, a senior officer of the issuer, duly authorized to so act on behalf of the company. The Exchange shall then confirm the allocation of the security to that DMM unit, at which time the security shall be deemed to have been so allocated. An issuer may request an extension from the Exchange if the issuer is unable to complete its selection within the specified period.

### (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.

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.

#### (2) DMM One Year Obligation

Whether the issuer or the Exchange selects the DMM unit to receive the security allocation, the individual DMM who is assigned the proposed security shall be required to remain the assigned DMM for one year from the date that the issuer begins trading on the Exchange. The DMM unit may designate a different individual DMM within the year by notifying the Exchange of the change in DMM and setting forth the reasons for the change with the consent and approval of the issuer.

#### (3) Foreign listing considerations

The special characteristics of foreign issues often require the DMM unit to commit extra resources in order to be a presence in the foreign market. Therefore, in allocations involving foreign issues, DMM units must provide information about its commitment to establish and maintain relationships with arbitrage houses and foreign brokerage units, and to gain familiarity with various aspects of trading securities of foreign issuers.

### **IV. REALLOCATION**

#### (A) Change of DMM Unit upon Request of Issuer

- (1) When an issuer has requested and confirmed a change of DMM unit pursuant to the procedures in Rule 103B.10 - Equities, the security will be put up for reallocation as soon as practicable, in accordance with the allocation process set forth in Rule 103B - Equities, Section III.

- (2) No negative inference for allocation or regulatory purposes is to be made against a subject DMM unit in the event that a DMM unit is changed pursuant to Rule 103B.10 - Equities. Similarly, the DMM unit shall not be afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.

## **V. EGREGIOUS SITUATIONS**

(A) In any instance where a DMM unit's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market, the CEO or his or her designee may immediately initiate a reallocation proceeding upon written notice to the DMM unit and the issuer specifying the reasons for the initiation of the proceeding.

(B) Following this decision, if the CEO or his or her designee makes a final determination that a security should be referred for reallocation, the CEO or his or her designee will, in his or her expert business judgment, be responsible for reallocating the security to the one of the remaining DMM units eligible for allocation.

(C) The CEO or his or her designee shall then make a final determination as to which one or more of the DMM unit's security shall be referred for reallocation. All determinations made by the CEO or his or her designee shall be communicated in writing to the DMM unit, with a statement of the reasons for such determinations.

(D) A decision by the Exchange that one or more securities should be reallocated shall be final, subject to the DMM unit's right to have such decision reviewed by the Exchange's Board of Directors.

(E) In the event that a DMM unit asserts its right to review, no reallocation may occur until the Board of Directors completes its review.

## **VI. POLICY NOTES**

### ***(A) Spin-offs, listing of related companies and related securities***

- (1) If a listing company is a spin-off of or a company related to a listed company, the listing company may remain with the DMM unit registered in the related listed company or be allocated through the allocation process pursuant to Rule 103B - Equities, Section III. If the spin-off company or company related to a listed company chooses to have its DMM unit selected by the Exchange pursuant to Rule 103B - Equities, Section III(B), and requests not to be allocated to the DMM unit that was its listed company's DMM unit, such request will be honored.
- (2) A warrant issued by a listed company and traded on the Exchange is allocated to the DMM unit registered in the underlying security of the listed company. Upon

request by the issuer, the warrant may be allocated through the allocation process pursuant to Rule 103B - Equities, Section III.

- (3) DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive the spin-off and listing of related companies.
- (4) Rights traded on the Exchange are not subject to the provisions of this Rule and are assigned, when issued, to the DMM unit by the Exchange.

***(B) Relistings***

Relistings are treated as new listings and will be allocated through the allocation process pursuant to Rule 103B - Equities, Section III. If the relisting chooses to have its DMM unit selected by the Exchange pursuant to Rule 103B - Equities, Section III(B), and requests not to be allocated to its former DMM unit, such request will be honored. DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.

***(C) Common Stock listing after Preferred Stock***

When a company applies to list an issue of common stock after having listed a preferred issue, the common stock is referred for allocation through the allocation process pursuant to Rule 103B - Equities, Section III. DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.

***(D) Listed Company Mergers***

(1) When two Exchange listed companies merge, the merged company may select one of the units trading the merging companies without the security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process pursuant to Rule 103B - Equities, Section III. A DMM unit that is ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities Sections II(D) and (E) will remain eligible to be selected pursuant to this section in its capacity as the DMM for one of the two pre-merger companies, but will not be eligible to participate in the allocation process if the post-merger listed company requests that the matter be referred for allocation through the allocation process pursuant to Rule 103B - Equities, Section III.

(2) If the merging company chooses to have its DMM unit selected by the Exchange pursuant to Rule 103B - Equities, Section III(B), the company may not request that the Exchange not allocate the security to one of the DMM units trading the merging company. DMM units that are ineligible to receive a new allocation due to its failure to

meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.

(3) In situations involving the merger of a listed company and an unlisted company, the merged company may choose to remain registered with the DMM unit that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process pursuant to Rule 103B - Equities. A DMM unit that is ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to be selected pursuant to this section in its capacity as the DMM for the pre-merger listed company, but will not be eligible to participate in the allocation process if the post-merger listed company requests that the matter be referred for allocation through the allocation process pursuant to Rule 103B - Equities, Section III.

(4) If the unlisted company chooses to have its DMM unit selected by the Exchange pursuant to Rule 103B - Equities, Section III(B), the company may not request that the Exchange exclude from consideration the DMM unit that had traded the listed company. DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.

**(E) `Target' Stock.** (1) If a tracking (`target') stock(s) is issued by a listed company, the listed company may choose to have its newly-issued tracking stock(s) stay with the DMM unit registered in the listed company that issued the tracking stock(s) or be referred for allocation through the allocation process pursuant to Rule 103B - Equities, Section III. DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.

(2) If the listed company chooses to have the DMM of the tracking stock(s) selected by the Exchange pursuant to Rule 103B - Equities, Section III(B) The DMM unit registered in such security prior to a separate listing shall remain registered in such security after its separate listing, unless the listing company requests that the matter be referred for allocation through the allocation process pursuant to Rule 103B - Equities. In such a case, the Exchange shall honor the company's request not to be allocated to the DMM unit that had traded the `target' stock. DMM units that are ineligible to receive a new allocation due to its failure to meet the requirements of Rule 103B - Equities, Section II(D) and (E) will remain eligible to receive an allocation pursuant to this section.

***(F) Allocation of Group of Closed-End Management Investment Companies (`Funds')***

(1) Funds listing on the Exchange pursuant to this policy will be subject to the allocation process pursuant to Rule 103B - Equities, Section III. If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM unit for those subsequently listed funds or it may select a different DMM unit from the group of eligible DMM units that the issuer

interviewed in the allocation process for its initial fund. The fund may also delegate the selection of its DMM unit to the Exchange if it so chooses pursuant to Rule 103B - Equities, Section III(B).

If a DMM unit is ineligible from participating in an allocation as set forth in Rule 103B - Equities, Section III, at the time of a subsequent new Fund listing (within the designated nine-month period), that DMM unit will not be included for consideration for subsequent listings.

(2) In any case where all the Funds in a group of closed-end management investment companies are being listed concurrently with a common investment adviser or investment advisers who are `affiliated persons' pursuant to the alternate criteria in Section 101 of the Exchange's Company Guide (for groups where one or more Funds do not meet the ordinary requirement for public market value of \$20,000,000), the entire group should be allocated to one DMM unit, unless there are factors, such as the number of funds in the group, the types of funds, or the relative values of the funds, which the Exchange believes make allocation to more than one DMM unit appropriate.

***(G) Allocation Freeze Policy***

In the event that a DMM unit: (i) loses its registration in a specialty stock as a result of proceedings under Rules 475 or 476 or the Rule 8000 or 9000 Series, as applicable; or (ii) voluntarily withdraws its registration in a specialty stock as a result of possible proceedings under those rules, the unit will be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security ("Allocation Prohibition").

Following the Allocation Prohibition, a second six month period will begin during which a DMM unit may apply for new listings, provided that the unit demonstrates to the Exchange relevant efforts taken to resolve the circumstances that triggered the Allocation Prohibition. The determination as to whether a unit may apply for new listings will be made by Exchange regulatory staff, in consultation with the Executive Floor Governors. The factors the staff will consider will vary depending on the unit's particular situation, but may include one or more steps such as:

- supplying additional manpower/experience;
- changes in professional staff;
- attaining appropriate dealer participation;
- enhancing back-office staff; and
- implementing more stringent supervision/new procedures.

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

Allocation decisions shall remain effective with respect to any initial public offering listing company which lists on the Exchange within twelve months of such decision. In situations in which the selected DMM unit merges or is involved in a combination within the 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 twelve months, the matter shall be referred for allocation through the allocation process pursuant to NYSE Rule 103B, Section III.

**(I) Criteria for applicants that are not currently DMMs**

(A) Since an entity seeking to enter the DMM business does not have a history directly comparable to that of existing units, the Exchange considers the following criteria with respect to applicants that are not currently DMMs.

1. Individuals proposed as DMMs must have successfully completed the Exchange's DMM examination.
2. The proposed unit must demonstrate that it understands the DMM business, including the needs of brokers, their organizations, and their customers.
3. The proposed unit must demonstrate an ability and willingness to trade as necessary to maintain fair and orderly markets with depth and liquidity, and facilitate the execution of orders.
  - a) The proposed unit should indicate the extent of its capital commitment to specializing over and above the minimum capital requirements.
  - b) The proposed unit must have sufficient DMM and clerical support dedicated to maintaining and servicing the market in a specialty stock.
  - c) If the proposed DMM unit or any of its participants is presently a DMM or market maker on any exchange, performance during the prior 12 months, as evidenced by available data maintained by such exchange which evaluates the quality of performance of the unit or its participants as a DMM or market maker on such exchange, will be considered by the Exchange.
4. Other factors that will be considered by the Exchange include any action taken or warning issued within the past 12 months by any regulatory or self regulatory organization against the unit or any of its participants with respect to any capital or operational problem, or any regulatory or disciplinary matter.



## **VII. PROCEDURES**

### **(A) Blanket applications**

All DMM units shall be deemed to have filed with the Exchange a blanket application pursuant to which the applicant agrees to accept the allocation of any security.

### **(B) Announcement**

Written notice of the name and post location of the assigned DMM unit are made known to the members of the Exchange and in instances where a company has delegated to the Exchange the selection of its DMM unit to the issuer of the security allocated.

### **(C) Registration of DMMs**

Each member associated with the DMM unit to which any security is allocated who acts as a regular DMM in such security shall be registered as a DMM in such security pursuant to Rule 103 - Equities.

## **VIII. PROVISIONS FOR ALLOCATION OF LISTING COMPANIES TRANSFERRING FROM NYSE ARCA, INC. (NYSE ARCA<sup>SM</sup>) TO THE EXCHANGE**

(A) If a listing company transferring from NYSE Arca<sup>SM</sup> to the Exchange was assigned a NYSE Arca Lead Market Maker unit ('LMM firm'), which is also a registered DMM unit on the Exchange, then the listing company may waive the allocation process described above and select as its registered DMM unit the same unit that was previously assigned as the NYSE Arca<sup>SM</sup> LMM unit. Alternatively, the listing company can choose to follow the regular allocation process and refer the matter for allocation through the allocation process pursuant to Rule 103B - Equities, Section III.

(B) If the listing company chooses to have its DMM unit selected by the Exchange pursuant to Rule 103B - Equities, Section III(B), and requests not to be allocated to the DMM unit that was its NYSE Arca<sup>SM</sup> LMM firm, such request will be honored.

## **IX. ALLOCATION OF SECURITIES TO DMM PANELS**

Securities listed on the Exchange or admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended, may be assigned for trading at panels that also trade securities listed on the New York Stock Exchange LLC.

### **.10 Change of DMM Unit upon Request of Company**

(a) A listed company may file with the Corporate Secretary of the Exchange a written notice (the "Issuer Notice"), signed by the company's chief executive officer, that it

wishes to request a change of DMM Unit. The Issuer Notice shall indicate the specific issues prompting this request. The Corporate Secretary shall provide copies of the Issuer Notice to the DMM Unit currently registered in the security, the Exchange's Global Corporate Client Group, and Exchange regulatory staff. After said written notice and completion of NYSE's review, the security shall be put up for allocation pursuant to Rule 103B - Equities, subject to the provisions of subparagraph (b) below.

Exchange regulatory staff shall review the Issuer Notice and any DMM response and may request a review of the matter by the Exchange's Regulatory Oversight Committee. No change of DMM Unit may occur until Exchange regulatory staff makes a final determination that it is appropriate to permit such change. In making such determination, Exchange regulatory staff may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a DMM to engage in conduct that is illegal or violates Exchange rules. Notwithstanding Exchange regulatory staff review of any matter raised during the process described herein, the Exchange may at any time take any regulatory action that it may determine to be warranted.

#### **Rule 104 - Equities. Dealings and Responsibilities of DMMs**

*This Rule is not applicable to trading on the Pillar trading platform.*

- (a) DMMs registered in one or more securities traded on the Exchange must 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. The responsibilities and duties of a DMM specifically include, but are not limited to, the following:
  - (1) Assist the Exchange by providing liquidity as needed to provide a reasonable quotation and by maintaining a continuous two-sided quote with a displayed size of at least one round lot.
    - (A) With respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the National Best Bid and National Best Offer ("inside") at least 10% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares. Time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. In calculating whether a DMM is meeting the 10% and 5% measure, credit will be given for executions for the liquidity provided by the DMM. Reserve or other hidden orders entered by the DMM will not be included in the inside quote calculations.

(B) *Pricing Obligations.* For NMS stocks (as defined in Rule 600 under Regulation NMS) a DMM shall adhere to the pricing obligations established by this Rule during the trading day; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

- (i) *Bid and Offer Quotations.* At the time of entry of the DMM's bid (offer) interest, the price of the bid (offer) interest shall be not more than the Designated Percentage away from the then current National Best Bid (Offer), or if no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) increases (decreases) to a level that would cause the bid (offer) interest to be more than the Defined Limit away from the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or if the bid (offer) is executed or cancelled, the DMM shall enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or identify to the Exchange current resting interest that satisfies the DMM's obligation according paragraph (1)(A), above.
- (ii) The National Best Bid and Offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.
- (iii) For purposes of this Rule, the "Designated Percentage" shall be 8% for securities subject to Rule 80C(a)(i), 28% for securities subject to Rule 80C(a)(ii), and 30% for securities subject to Rule 80C(a)(iii), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 80C is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 80C(a)(i), 28% for securities subject to Rule 80C(a)(ii), and 30% for securities subject to Rule 80C(a)(iii).
- (iv) For purposes of this Rule, the "Defined Limit" shall be 9.5% for securities subject to Rule 80C(a)(i), 29.5% for securities subject to Rule 80C(a)(ii), and 31.5% for securities subject to Rule 80C(a)(iii), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 80C is not in effect, the Defined Limit shall be 21.5% for securities subject to Rule 80C(a)(i), 29.5% for securities subject to Rule 80C(a)(ii), and 31.5% for securities subject to Rule 80C(a)(iii).

Nothing in this Rule shall preclude a DMM from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.

(2) Facilitate openings and reopenings for each of the securities in which the DMM is registered as required under Exchange rules. This may include supplying liquidity as needed. (See Rule 123D - Equities for additional responsibilities of DMMs with respect to openings and Rule 13 - Equities with respect to Reserve Order interest procedures at the opening.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement.

(3) Facilitate the close of trading for each of the securities in which the DMM is registered as required by Exchange rules. This may include supplying liquidity as needed. (See Rule 123C - Equities for additional responsibilities of DMMs with respect to closes and Rule 13 - Equities with respect to Reserve Order interest procedures at the close.) DMM and DMM unit algorithms will have access to aggregate order information in order to comply with this requirement.

**(b) DMM Unit Algorithms**

(i) DMM units shall have the ability to employ algorithms for quoting and trading consistent with Exchange and SEC regulations.

(ii) Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.

(iii) Except as provided for in paragraphs (a)(2) and (a)(3) of this Rule, the DMM unit's system employing algorithms will have access to information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest, to the extent such information is made publicly available. DMM unit algorithms will receive the same information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest as is disseminated to the public by the Exchange and shall receive such information no sooner than it is available to other market participants.

(iv) The DMM unit's algorithm may place within Exchange systems trading interest to be known as a "Capital Commitment Schedule". (See Rule 1000 - Equities concerning the operation of the Capital Commitment Schedule.)

(v) All DMM unit trades via an algorithm must comply with all SEC and Exchange rules, policies and procedures governing DMM unit trading.

- (vi) DMM units may not enter the following orders and modifiers: Market Orders, MOO Orders, CO Orders, MOC Orders, LOC Orders, or Buy Minus Zero Plus Instructions.
- (c) A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.
- (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 Exchange BBO through the use of Capital Commitment Schedule interest (see Rule 1000 - Equities). Any orders eligible for execution in the Exchange systems at the price of the DMM unit's interest will trade on parity with such interest, as will any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit's interest.
- (e) DMM units shall 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 remain unpaired after the DMM has paired all other eligible round lot sized interest.
- (f) **Functions of DMMs**
  - (i) Any member who expects to act as a DMM in any listed stock must be registered as a DMM. See Rule 103 - Equities for registration requirements for DMMs.
  - (ii) The function of a member acting as a DMM on the Floor of the Exchange includes the maintenance, in so far as reasonably practicable, of a fair and orderly market on the Exchange in the stocks in which he or she is so acting. The maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth, to the extent possible consistent with the ability of participants to use reserve orders, and the minimizing of the effects of temporary disparity between supply and demand. In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as DMM engage to a reasonable degree under existing circumstances in dealings for the DMM's own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.
  - (iii) The Exchange will supply DMMs with suggested Depth Guidelines for each security in which a DMM is registered. The administration of the Depth Guidelines will be contained in notices periodically issued to all DMMs. In connection with a DMM's responsibility to maintain a fair and orderly market, DMMs will be expected to quote and trade with reference to the Depth Guidelines where necessary.
  - (iv) DMMs are designated as market maker on the Exchange for all purposes under

the Securities Exchange Act of 1934 and the rules and regulations thereunder.

**(g) Transactions by DMMs**

(i) Transactions on the Exchange by a DMM for the DMM's account are to be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock.

(A) The following types of transactions are permitted to render the DMM's position adequate to such markets' needs:

**(I) Neutral Transactions**

(1) Definition - A neutral transaction is a purchase or sale by which a DMM liquidates or decreases a position.

(2) Neutral Transactions may be made without restriction as to price.

(3) Re-entry Obligation Following Neutral Transactions - The DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Neutral Transactions. Such re-entry transactions should be in accordance with the immediate and anticipated needs of the market.

**(II) Non-Conditional Transactions**

(1) Definition - A non-conditional transaction is a DMM's bid or purchase and offer or sale that establishes or increases a position, other than a transaction that reaches across the market to trade with the Exchange BBO.

(2) Non-Conditional Transactions may be made without restriction as to price in order to:

(i) match another market's better bid or offer price;

(ii) bring the price of a security into parity with an underlying or related security or asset;

(iii) add size to an independently established bid or offer on the Exchange;

(iv) purchase at the published bid price on the Exchange;

(v) sell at the published offer price on the Exchange;

(vi) purchase or sell at a price between the Exchange BBO;

(vii) purchase below the published bid or sell above the published offer on the Exchange;

(3) Re-entry Obligation Following Non-Conditional Transactions - The DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional Transactions and the immediate and anticipated needs of the market.

(III) Prohibited Transactions

(1) During the last ten minutes prior to the close of trading, a DMM with a long position in a security is prohibited from making a purchase in such security that results in a new high price on the Exchange for the day at the time of the DMM's transaction, except as provided in subparagraphs (g)(i)(A)(II)(2)(i) through (g)(i)(A)(II)(2)(ii) above.

(2) During the last ten minutes of trading, a DMM with a short position in a security is prohibited from making a sale in such security, that results in a new low price on the Exchange for the day at the time of the DMM's transaction, except as provided in subparagraphs (g)(i)(A)(II)(2)(i) through (g)(i)(A)(II)(2)(ii) above.

(h) DMM Transactions in Securities that Establish or Increase the DMM's Position:

(i) Definition - 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.

(ii) The following Conditional Transactions, may be made by a DMM without restriction as to price, provided they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. ("Appropriate" re-entry shall mean re-entry on the opposite side of the market at or before the price participation point or the "PPP".):

(A) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange and above the last differently-priced published offer on the Exchange; and

(B) A DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange and below the last differently-priced published bid on the Exchange.

(iii) Re-entry Obligations for Conditional Transactions:

- (A) "PPPs"—The Exchange will periodically issue guidelines, called price participation points ("PPP"), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM is meeting its obligations.
- (B) Notwithstanding that a security may not have reached the PPP, the DMM may be required to re-enter the market immediately after a Conditional Transaction based on the price and/or volume of the DMM's trading in reference to the market in the security at the time of such trading. In such situations DMMs may or may not rely on the fact and circumstance that there may have been one or more independent trades following the DMM's trading to justify a failure to re-enter the market.
- (C) Immediate re-entry is required after the following Conditional Transactions:
  - (I) A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of \$200,000 or more, and (3) exceeds 50% of the published offer size.
  - (II) A sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of \$200,000 or more, and (3) exceeds 50% of the published bid size.
  - (III) A sweep is viewed as a transaction with the published bid or offer for the purpose of subparagraphs (h)(iii)(C)(I) and (h)(iii)(C)(II) above.
- (iv) The following Conditional Transactions may be made without restriction as to price:
  - (A) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange; and
  - (B) A DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange.
- (i) Re-entry obligations following transactions defined in subparagraphs (h)(iv)(A) and (h)(iv)(B) above are the same as for Non-Conditional Transactions pursuant to subparagraph (g)(i)(A)(3) above.



**(j) Trading Floor Functions of DMMs**

- (i) A DMM may perform the following Trading Floor functions:
- (A) maintain order among Floor brokers manually trading at the DMM's assigned panel;
  - (B) bring Floor brokers together to facilitate trading, which may include the DMM as a buyer or seller;
  - (C) 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 cancelling or inputting Floor broker agency interest on behalf of a Floor broker; and
  - (D) 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.
- (ii) The Exchange may make systems available to a DMM at the post that display the following information about securities in which the DMM is registered: (A) aggregated buying and selling interest; (B) 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 shall exclude any order or portion thereof that a market participant has elected not to display to a DMM; and (C) post-trade information. A DMM may not use any information provided by Exchange systems pursuant to this subparagraph (ii) in a manner that would violate Exchange rules or federal securities laws or regulations.
- (iii) The DMM may provide market information that is available to the DMM at the post as described in subparagraph (j)(ii) to: (A) respond to an inquiry from a Floor broker in the normal course of business; or (B) visitors to the Trading Floor for the purpose of demonstrating methods of trading; provided, however, that a Floor broker may not submit an inquiry pursuant to this subparagraph (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 this subparagraph (j)(iii).
- (k) Temporary DMMs. 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, a Floor Governor may authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as temporary DMM for that day only.

A member who acts as a temporary DMM by such authority is required to file with the Exchange, at the end of the day, a report showing (a) the name of the stock or stocks in which he so acted, (b) the name of the regular DMM, (c) the time of day when he so acted, and (d) the name of the Floor Governor who authorized the arrangement. The necessary forms may be obtained at the Information Desk.

The Floor Governor will not give such authority for the purpose of permitting a member not registered as DMM habitually to relieve another DMM at lunch periods, etc.

If a temporary DMM substitutes for a DMM, and if no DMM is present, the temporary DMM is expected to assume the obligations and responsibilities of DMMs for the maintenance of the market.

### **Rule 104A - Equities. DMMs—General**

*This Rule is not applicable to trading on the Pillar trading platform.*

#### **••• *Supplementary Material:***

**.50 Equity Trading Reports.**—Every DMM unit (including relief DMMs) must keep a record of purchases and sales initiated on the Floor (including purchases and sales resulting from orders routed from the Exchange to another market center), in stocks in which he or she is registered, for an account in which he or she has an interest. DMM units must also maintain records of purchases and sales in the Exchange's off-hours trading sessions. Such record must show the sequence in which each transaction actually took place, the time thereof, and whether such transaction was at the same price or in what respect it was at a different price in relation to the immediately preceding transaction in the same stock. The price designations for transactions made in another market center pursuant to Regulation NMS are to be determined from the immediately preceding transaction price on the Exchange at the time the commitment or obligation to trade is issued. DMM units and relief DMMs are required to report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.

Paragraph 104.12 - Equities sets forth circumstances under which DMMs who maintain investment accounts in registered securities are required to submit an equity trading data report.

**Options and single stock futures trading data reports.**—Every DMM unit (including relief DMMs) must keep a record of all options and single stock futures purchases and sales to hedge its registered security positions as permitted by Rule 105 - Equities and must report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.

**Foreign securities reports**—Every DMM unit (including relief DMMs) must keep a record of all purchases and sales of foreign securities (as defined in Rule 36.30 - Equities) for an account in which he or she has as interest. DMM units and relief DMMs are

required to report such transactions in such automated format and with such frequency as may be prescribed by the Exchange.

**Rule 104B - Equities. DMM Commissions**

*This Rule is not applicable to trading on the Pillar trading platform.*

No DMM or DMM unit may charge a commission for the execution of a trade in any of his or her registered securities.

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**Rule 113 - Equities. DMM Unit's Public Customers**

*This Rule is not applicable to trading on the Pillar trading platform.*

(a) No DMM or DMM unit with which he or she is associated shall accept an order for the purchase or sale of any stock in which he or she is registered as a DMM directly (1) from the company issuing such stock; (2) from any officer, director or 10% stockholder of that company; (3) from any pension or profit-sharing fund; (4) from any institution, such as a bank, trust company, insurance company, or investment company.

(b) No order given to a DMM for the purchase or sale of a security in which he or she is registered as a DMM shall indicate in any way the account for which it is entered except for orders received by the DMM by means other than any Exchange automated order routing system for accounts in which any of the below-named persons or parties has a direct or indirect interest:

(i) The DMM himself or herself;

(ii) any member, principal executive, officer, employee or person or party active in the business of such DMM; and

(iii) the spouse and children of any of the above-named persons or parties who reside in the same household as such person or party.

(c) Every DMM shall report to the Exchange on a monthly basis, on such form and in such format as the Exchange may prescribe, a record of all purchases and sales effected in stocks in which he or she is registered for any customer account not prohibited under section (a) which:

(1) is carried by the DMM's unit; or

(2) is serviced by such DMM or DMM's unit; or

(3) is introduced by such DMM or DMM's unit to another member organization on a

disclosed basis.

••• ***Supplementary Material:***

.20 **'Popularizing' stocks in which a DMM is registered.**— It is contrary to good business practice for a DMM or his or her DMM unit or any other member, or principal executive in such organization, or any officer or employee thereof, to "popularize", either orally or in writing, any security in which he or she is registered. An approved person or member organization associated with the DMM unit may popularize a security in which such DMM is registered, provided that it makes the following disclosures:

- (i) It is associated with a DMM who makes a market in the security;
- (ii) At any given time, the associated DMM may have an inventory position, either "long" or "short", in the security; and
- (iii) As a result of the associated DMM's function as a market maker, such DMM may be on the opposite side of orders executed on the Floor of the Exchange in the security.

**[Rule 113 Former - Equities. DMMs' Public Customers**

*This Rule is applicable only to those DMM member organizations and associated approved persons that have been approved for an exemption under Rule 98 (Former) - Equities and have not been approved to operate as a DMM unit under Rule 98 - Equities. This Rule is not available for new entrants to become a DMM unit at the Exchange.*

(a) No DMM, the member organization with which he is associated, or subsidiary of such organization within the meaning of Rule 321 - Equities, or any approved person of the same member organization as such DMM, shall accept an order for the purchase or sale of any stock in which he is registered as a DMM directly (1) from the company issuing such stock; (2) from any officer, director or 10% stockholder of that company; (3) from any pension or profit-sharing fund; (4) from any institution, such as a bank, trust company, insurance company, or investment company.

(b) No order given to a DMM for the purchase or sale of a security in which he is registered as a DMM shall indicate in any way the account for which it is entered except for orders received by the DMM by means other than any Exchange automated order routing system for accounts in which any of the below-named persons or parties has a direct or indirect interest:

- (i) The specialist himself;
- (ii) any member, principal executive, officer, employee or person or party active in the business of such specialist;
- (iii) the spouse and children of any of the above-named persons or parties who reside in

the same household as such person or party; and

(iv) any approved person of the same member organization as such specialist.

(c) Every specialist shall report to the Exchange on a monthly basis, on such form and in such format as the Exchange may prescribe, a record of all purchases and sales effected in stocks in which he is registered for any customer account not prohibited under section (a) which:

(1) is carried by his member organization; or

(2) is serviced by him or his member organization; or

(3) is introduced by him or his member organization to another member organization on a disclosed basis.

••• ***Supplementary Material:***

.20 **‘Popularizing’ specialty stocks.**— It is contrary to good business practice for a DMM or his member organization or any other member, principal executive or approved person (other than an approved person entitled to an exemption from this Rule pursuant to Rule 98- Equities) in such organization or any officer or employee thereof to ‘popularize’, either orally or in writing, any security in which he is registered. An approved person entitled to the exemption from this Rule pursuant to Rule 98 - Equities may popularize a security in which an associated DMM is registered, provided that it makes the following disclosures:

(i) It is associated with a DMM who makes a market in the security:

(ii) At any given time, the associated DMM may have an inventory position, either ‘long’ or ‘short’, in the security; and

(iii) As a result of the associated DMM's function as a market maker, such DMM may be on the opposite side of orders executed on the Floor of the Exchange in the security.]

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**Rule 123E - Equities. DMM Combination Review Policy**

*This Rule is not applicable to trading on the Pillar trading platform.*

(a) No DMM unit shall complete a "proposed combination" (as defined below in paragraph (b) of this rule) with one or more other DMM units unless the combination has been approved by the Exchange.

(b) For purposes of this rule, a "proposed combination" means:

- (1) a transaction in which two or more DMM units agree to merge or otherwise combine their businesses, with the result that the total number of existing independent DMM units will be reduced;
  - (2) two or more DMM units agree to combine their businesses with the result that the existing number of DMM units will not be reduced, but one or more of the surviving units is substantially reduced in size; or
  - (3) a DMM unit merges or otherwise combines with a non-DMM business resulting in a change of control of the existing DMM unit.
- (c) Proponents of a DMM unit combination must make a written submission to the Office of the Corporate Secretary of the Exchange, discussing all the factors for review pursuant to subparagraph (d) below. The written submission should also address and discuss:
- (1) performance in any securities received through previous combinations or transfers of registrations during the preceding two years;
  - (2) whether the resulting DMM unit will maintain staffing adequate to the needs of the market place;
  - (3) whether the proposed combined unit will have a real-time surveillance system that monitors DMM trading and uses exception alerts to detect unusual trades or trading patterns; and
  - (4) whether the proposed combined unit will have disaster recovery facilities for its computer network and software;
  - (5) whether it has designated specific individuals to handle unusual situations on the Floor (if so, the names of the individuals);
  - (6) whether the combined unit will employ a "zone" or other management system on the Floor (with identification of the names of the individuals and their specific responsibilities, as applicable); and
  - (7) whether the combined unit will designate a senior staff member to be responsible for reviewing DMM performance data, with specific procedures for correcting any deficiencies identified.
- (d) The Exchange will consider the following criteria in its review of a proposed combination:
- (1) the ability of the DMM unit or units resulting from the transaction to comply with Equities rules, including, without limitation, the provision of Rule 98 - Equities; Rule 103 - Equities; Rule 103B, Section II - Equities and Rule 104 - Equities;

(2) whether the proposed combination minimizes both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole;

(3) whether the proposed combination maintains or increases operational efficiencies;

(4) the surviving DMM unit's commitment to the Exchange market, including but not limited to whether the constituent DMM units:

(A) work to support, strengthen and advance the Exchange, its market and its competitiveness in relation to other markets;

(B) participate upon request in the Exchange's marketing seminars, sales calls and other marketing initiatives seeking to attract order flow and new listings;

(C) accept innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational;

(D) assist other units by providing capital and personnel in unusual market situations, such as "breakouts" and difficult openings;

(E) engage in efforts to streamline the efficiency of its own operations and its competitive posture; and

(5) The effect of the proposed combination on overall concentration of DMM units.

(e) Where a proposed combination involves an organization that is not a DMM unit, consideration shall entail an assessment of whether the organization will work to support, strengthen and advance the Exchange, and its competitiveness in relation to other markets.

(f) The Exchange shall approve or disapprove a proposed combination within ten (10) business days based on its assessment of the criteria pursuant to subparagraph (d) above and, in the case of a proposed combination involving a non-DMM unit, its assessment of the additional criteria pursuant to subparagraph (e) above. The Exchange reserves the right to extend its review process if the information submitted by the proponents of the DMM combination is inadequate or requires additional time to review to enable the Exchange to reach a decision.

(1) The Exchange shall approve a proposed combination if the proposed combination satisfies the criteria set forth in Rule 123E(d)(1)-(5) - Equities, and if the Exchange determines that the proposed combination would:

(A) not create or foster concentration in the DMM business detrimental to the Exchange and its markets;

(B) foster competition among DMM units; and

(C) enhance the performance of the constituent DMM unit and the quality of the markets in the securities involved.

(g) The Exchange may condition its approval upon compliance by the resulting DMM unit with any steps the Exchange may specify to address any concerns it may have in regard to considerations of the above criteria.

(h) In any instance where the Exchange does not approve a proposed DMM combination, the proponents of such proposed combination have a right to have such decision reviewed by the Exchange's Board of Directors.

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### **Rule 460 - Equities. DMMs Participating in Contests**

*This Rule is not applicable to trading on the Pillar trading platform.*

(a) No DMM member or his or her DMM unit or any other member, principal executive, or officer or employee of such DMM unit shall participate in a proxy contest of a company if such DMM member is registered in the stock of that company.

DMMs as Directors

(b) No DMM member or his or her DMM unit or any other member, principal executive, officer or employee of such DMM unit shall be a director of a company if such DMM member is registered in the stock of that company.

#### **••• *Supplementary Material:***

#### **.10 Control relationships—Business transactions—Finder's Fees.—**

(a)(1) A DMM unit shall report the beneficial ownership of more than 5% of the outstanding shares of any equity security that is allocated to that unit. A DMM unit shall update any report if its beneficial ownership is reduced below 5% or exceeds 10% of the outstanding shares of any equity security that is allocated to that unit.

(2) The reporting obligation in (a)(1) shall not apply if the security is:

- (i) a convertible or derivative security, American Depositary Receipt, Global Depositary Receipt, or similar instrument, unless the conversion or redemption of such security would directly or indirectly cause the DMM unit to have a position in any security allocated to the DMM unit that is in excess of the limits set forth in section (a)(1) of this Rule;



(ii) reserved; or

(iii) a security, such as a currency warrant, that trades in relationship to the value of that underlying currency, or a security, such as an index warrant, that trades in relationship to the value of that underlying index.

(3) A DMM unit may not in any event acquire directly or indirectly the beneficial ownership of more than 25% of any security allocated to that unit or any security specified in (a)(2)(i), (ii), or (iii) of this Rule. This provision applies regardless of whether the beneficial ownership is acquired for investment, trading, or any other purpose.

(b)(1) No DMM unit or any other member, principal executive, officer or employee thereof shall engage in any business transaction (including loans, etc.) with any company in whose stock the DMM is registered, or accept a finder's fee from such company, except as provided below.

(2) Notwithstanding the provision in (b)(1) above, a DMM registered in a security issued by an investment company may purchase and redeem the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(3) The provisions of (b)(1) shall not apply to the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available.

.11 Reserved.

.12 Reserved.

.20 The restrictions in paragraph .10 above relating to business transactions between a DMM or his or her DMM unit or any other member, principal executive, officer or employee thereof shall not apply to derivative instruments based on one or more securities, currencies or commodities (collectively referred to as Exchange-Traded Funds (or "ETFs")), if the following conditions are met:

(i) the DMM or his or her DMM unit or any other member, principal executive, officer or employee thereof only enters into the business transaction with the sponsor of the ETF and the sponsor is not involved in the day-to-day administration of the ETF; and

(ii) any fee or other compensation in connection with the business transaction paid to the DMM or his or her DMM unit or any other member, principal executive, officer or employee thereof must not be dependent on the trading price or daily trading volume of the ETF; and

(iii) the DMM or his or her DMM unit or any other member, principal executive, officer or employee thereof must notify and provide a full description to the Exchange of any

business transaction or relationship, except those of a routine and generally available nature as described in paragraph .10 above, it may have with any sponsor of an ETF that he or it is registered as DMM in.

.30 (a) An approved person or member organization associated with a DMM unit ("Affiliated DMM") shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (b) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security
2. symbol
3. type of security
4. symbol of reference security or securities (if different from security being distributed)
5. description of distribution or tender or exchange offer
6. distribution price or terms of tender or exchange offer
7. date of pricing
8. time of pricing
9. pricing basis (e.g., Exchange or Consolidated close)
10. beginning and ending dates of restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date
11. firm submitting notification
12. name and title of individual submitting notification
13. telephone number
14. such other information as the Exchange may from time to time require

(b) The notification requirements of this rule are applicable to any security in which the Affiliated DMM is registered where such security is either:

(i) the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 10b-13 under the Securities Exchange Act of 1934; or

(ii) a covered security as defined in Rule 100 of Regulation M.

.40 For purposes of this rule, "equity security" shall have the meaning set forth in Rule 13d-1(i) of the Exchange Act, 17 CFR 240.13d-1(i), "outstanding shares" shall have the meaning set forth in Rule 13d-1(j) of the Exchange Act, 17 CFR 240.13d-1(j), and "beneficial owner" shall have the meaning set forth in Rule 13d-3 of the Exchange Act, 17 CFR 240.13d-3, and all related interpretations thereof.

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