

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69735; File No. SR-NYSE-2013-39)

June 11, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 103B, Section III(A) to increase from three to four the minimum number of DMM units an issuer must interview from the pool of DMM units eligible to participate in the allocation process

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 6, 2013, New York Stock Exchange LLC (the “Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 103B, Section III(A) to increase from three to four the minimum number of DMM units an issuer must interview from the pool of DMM units eligible to participate in the allocation. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 103B, Section III(A) (“Security Allocation and Reallocation”) to increase from three to four the minimum number of DMM units an issuer must interview from the pool of DMM units eligible to participate in the allocation process.

Rule 103B provides two options for the allocation of securities to DMMs: (1) the issuer selects the DMM unit; or (2) the issuer delegates selection of the DMM unit to the Exchange.³ If the issuer proceeds under the first option, the listing company selects the DMM units it wishes to interview. A DMM unit’s eligibility to participate in the allocation process is based on objective criteria and determined at the time the interview is scheduled.

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

³ In 2008, the Commission approved the Exchange’s amendments to its rules to allow an issuer to select the DMM units it chooses to interview directly from the DMM units that are eligible to participate in the allocation process and eliminated the Allocation Committee. See Securities Exchange Act Release No. 58857 (Oct. 24, 2008), 73 FR 65435 (Nov. 3, 2008) (SR-NYSE-2008-52) (Approval Order).

Following the 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 then contacts the unit(s) to which the question pertains and provides any available information received from the unit(s) to the listing company. Within two business days of the issuer's interviews with the DMM units, the issuer selects its DMM unit in writing. The Exchange then confirms the allocation of the security to that DMM unit, at which time the security is deemed to have been so allocated.

If the issuer decides to select the DMM unit itself and conducts interviews pursuant to the above process, the issuer is currently required to select a minimum of three DMM units to interview from the pool of DMM units eligible to participate in the allocation process. The Exchange is proposing to increase the minimum number of DMM units that must be interviewed from three to four.⁴ By increasing the minimum number of DMM units that must be interviewed, a larger number of DMM firms will have an opportunity to participate in the allocation process, which will lead to an increase in competition without being overly burdensome on the issuer. The increase in number of DMM units to interview will also provide the issuer with more choice in the selection of its assigned DMM unit. The Exchange believes that the increase in competition will provide DMM units with a greater incentive to perform optimally.⁵

⁴ When a security is put up for reallocation, pursuant to NYSE Rule 103B, Section IV, the allocation process set forth in NYSE Rule 103B, Section III is followed. Under the proposed amendment, therefore, if an issuer chooses to select the DMM unit itself during the reallocation process, the issuer will have to interview a minimum of four DMM units.

⁵ The Exchange also proposes to make technical, non-substantive changes to Rule 103B to conform the style of the headings in the rule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposal will promote just and equitable principles of trade because it will allow more DMM units to participate in the allocation process. The inclusion of these additional DMM units, moreover, will be based on objective criteria. Additionally, the Exchange believes that the proposal is designed to remove impediments to, and perfect the mechanism of a free and open market because increasing the number of DMMs participating in the allocations will increase competition to provide services to issuers and, thus, provide DMM units with a greater incentive to perform optimally, and will provide the issuer with more choice in the selection of its assigned DMM unit.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will increase competition among DMM units by allowing more DMM units to participate in the interview process and provide DMM units with a greater incentive to perform optimally potentially and enhance the quality of the services DMMs provide to issuers. While the proposal may increase the burden on issuers during the allocation process, the Exchange believes that any such increase will be small relative to the benefits that additional competition between DMM units may provide. Issuers could, moreover,

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

permit the Exchange to select the DMM unit pursuant to the process found in NYSE Rule 103B, Section III(B), which would lessen the burden of the allocation process on such issuers.⁸

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay will benefit the Exchange’s market, issuers, and investors. Therefore, the Commission designates the proposal operative upon filing.¹¹

At any time within 60 days of the filing of such proposed rule change, the Commission

⁸ Despite delegating authority to the Exchange to select its DMM unit, an issuer may choose to submit a letter to the Exchange Selection Panel (“ESP”) indicating its preference and supporting justification for a particular DMM unit. See NYSE Rule 103B, Section III(B)(1).

⁹ 15 U.S.C. 78s(b)(3)(A).

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

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2013-39 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2013-39. 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

¹² 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2013-39 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).