

establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: CP2017-120; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: February 7, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Gregory Stanton; *Comments Due*: February 15, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79982; File No. SR-NYSEMKT-2017-04]

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

February 7, 2017.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934

("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 25, 2017, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("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 Web site 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 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.⁴ 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.⁵ 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.⁶

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,⁷ an ETP Holder⁸ could register as a Market Maker⁹ and be subject to obligations similar to the obligations of a Market Maker on NYSE Arca Equities.¹⁰ 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 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).

2016) (SR-NYSEMKT-2016-97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the "Framework Filing").

⁵ 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").

⁶ See SR-NYSEMKT-2017-1 ("Trading Rules Filing").

⁷ 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.

⁸ 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.

⁹ As described below, the Exchange proposes to define the term "Market Maker" in Rule 1.1E(v).

¹⁰ On NYSE Arca Equities, the term "Market Maker" is defined in NYSE Arca Equities Rule 1.1(v).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10,

¹ 15 U.S.C. 78s(b)(1).

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,¹¹ 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 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

¹¹ 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).

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.”¹² 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.

- The Exchange proposes to amend Rule 1.1E(w) to delete the term “Reserved” and define the term “Market Maker Authorized Trader” or “MMAT”

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

to mean an Authorized Trader¹³ 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.¹⁴

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.¹⁵ 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

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

¹⁴ See Rule 2(i)—Equities, *supra* note 11.

¹⁵ 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”.

a member organization registered as a DMM or SLMM under Exchange rules as of one business day before the Pillar transition date.¹⁶ 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 [sic] 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 [sic] 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-

¹⁶ 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.

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,¹⁷ 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.¹⁸ 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 DMM. This proposed rule text is based on current Rule 98A—Equities, with non-substantive differences to use

¹⁸ 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).

¹⁷ See Rule 98(b)(1)—Equities.

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.¹⁹ 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

¹⁹ 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.

DMMs with a greater incentive to perform optimally.²⁰

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 trading on the Exchange, which is based on Rule 103B(III)(B)(2)—Equities.²¹

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;

²⁰ 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).

²¹ 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.

- 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 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 [sic], 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).²²
- 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.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the

Securities Exchange Act of 1934 (the “Act”),²³ in general, and furthers the objectives of Section 6(b)(5),²⁴ 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 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

²² 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.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

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 email to 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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2017-04 and should be submitted on or before March 6, 2017.

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

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-02837 Filed 2-10-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC-32472; File No. 812-14708]

NorthStar/Townsend Institutional Real Estate Fund Inc., et al.; Notice of Application

February 7, 2017.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY:

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges ("EWCs").
Applicants: NorthStar/Townsend Institutional Real Estate Fund Inc. (the "Fund"), Townsend Holdings LLC (the "Adviser"), and NSAM B-TCEF Ltd. (the "Sub-Adviser," and together with the Adviser, the "Advisers").

DATES:

Filing Dates: The application was filed on October 19, 2016, January 6, 2017, and January 20, 2017.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 6, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: NorthStar/Townsend Institutional Real Estate Fund Inc., 399 Park Avenue, 18th Floor, New York, NY 10022; Townsend Holdings LLC, Skylight Office Tower, 1660 West Second Street, 4th Floor, Cleveland, Ohio 44113; NSAM B-TCEF Ltd., 11 Waterloo Lane, Pembroke, HM 08, Bermuda.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Fund is a Maryland corporation that has registered under the Act as a non-diversified, closed-end management investment company. The Fund's primary investment objectives are to realize capital appreciation and to preserve shareholders' capital, with a secondary objective of generating income through cash distributions.

2. The Adviser is a Delaware limited liability company that is doing business as the Townsend Group and is registered as an investment adviser under the Investment Advisers Act of

1940 ("Advisers Act"). The Adviser serves as investment adviser to the Fund.

3. The Sub-Adviser is a Bermuda limited exempted company and is a registered investment adviser under the Advisers Act. The Sub-Adviser serves as the investment sub-adviser to the Fund.

4. The applicants seek an order to permit the Fund to issue multiple classes of shares, each having its own fee and expense structure, and to impose asset-based distribution and/or service fees and EWCs.

5. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,¹ acts as investment adviser and which operates as an interval fund pursuant to rule 23c-3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act") (each, a "Future Fund" and together with the Fund, the "Funds").²

6. The Fund intends to make a continuous public offering of its common stock upon a declaration of effectiveness of its registration statement (File Nos. 333-214167 and 811-23200). Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

7. If the requested relief is granted, the Fund intends to continuously offer Class A Shares, Class C Shares, and Class I Shares. Because of the different distribution and/or service fees, services and any other class expenses that may be attributable to the Class A Shares, Class C Shares and Class I Shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

8. Applicants state that, from time to time, the Fund may create additional

¹ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

²⁵ 17 CFR 200.30-3(a)(12).