November 21, 2016.[9] However, following testing, BX has decided to delay the implementation of these new functionalities to provide additional time for systems testing. The new functionality shall be implemented no later than March 31, 2017. BX will announce the new implementation date by an Equity Trader Alert, which shall be issued prior to the implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, 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 a national market system, and, in general to protect investors and the public interest. The purpose of this proposal is to inform the SEC and market participants of the new implementation date for the Post-Only, Midpoint Pegging, and Trade Now functionalities. The functionalities themselves were previously proposed in rule filings that were submitted to the SEC, and this proposal does not change the substance of those functionalities.[12] BX is delaying the implementation date of these functionalities to provide for further systems testing prior to implementing these functionalities.

*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 not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the purpose of this proposal is to extend the implementation date for Post-Only, Midpoint Pegging and Trade-Now functionalities so that BX may perform additional systems testing prior to implementing these functionalities.

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

No written comments were either solicited or received.

[9] *See* Equity Trader Alert #2016–291.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] BX notes that the Trade-Now functionality was submitted to the SEC as an immediately effective filing, while the Post-Only and Midpoint Pegging functionalities were the subject of an SEC approval order. *See supra* notes 3 and 4.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to *rule-comments@sec.gov.* Please include File Number SR–BX–2017–008 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–BX–2017–008. 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–BX–2017–008 and should be submitted on or before March 15, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–03401 Filed 2–21–17; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 19(b) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–19(b)) authorizes the Commission to regulate registered

investment company (''fund'') distributions of long-term capital gains made more frequently than once every twelve months. Accordingly, rule 19b–1 under the Act (17 CFR 270.19b–1) regulates the frequency of fund distributions of capital gains. Rule 19b–1(c) states that the rule does not apply to a unit investment trust (''UIT'') if it is engaged exclusively in the business of investing in certain eligible securities (generally, fixed-income securities), provided that: (i) The capital gains distribution falls within one of five categories specified in the rule [1] and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the ''notice requirement'').[2] Rule 19b–1(e) permits a fund to apply to the Commission for permission to distribute long-term capital gains that would otherwise be prohibited by the rule if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution.[3] An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that five funds will file an application under rule 19b–1(e) each year.[4] The staff understands that if a fund files an application it generally uses outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The staff estimates that, on average, a fund's investment adviser would spend approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of $433 per hour and 0.5 hours by an administrative assistant at a cost of $74 per hour, and the fund's board of directors would spend an additional 1 hour at a cost of $4,465 per hour, for a total of 5 hours.[5] Thus, the staff estimates that the annual hour burden of the collection of information imposed by rule 19b–1(e) would be approximately five hours per fund, at a cost of $6017.50.[6] Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b–1(e), the total burden for the information collection is 40 hours at a cost of $30,087.50.[7]

Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b–1(c).

As noted above, Commission staff understands that funds that file an application under rule 19b–1(e) generally use outside counsel to prepare the application.[8] The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b–1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as $400 per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the rule 19b–1(e) exemptive application is $4,000.[9] Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b–1(e), the total annual cost burden imposed by the exemptive application requirements of rule 19b–1(e) is estimated to be $20,000.[10]

The Commission staff estimates that there are approximately 2,579 UITs [11] that may rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b–1(c) once a year to make a capital gains distribution.[12] In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b–1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practice, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b–1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b–1(c)(2) is approximately $50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately $128,950.[13] The staff therefore estimates that the total cost imposed by rule 19b–1 is $160,950 ($128,950 plus $20,000 (total cost associated with rule 19b–1(e)) equals $148,950).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on

[1] 17 CFR 270.19b–1(c)(1).

[2] The notice requirement in rule 19b–1(c)(2) supplements the notice requirement of section 19(a) [15 U.S.C. 80a–19(a)], which requires any distribution in the nature of a dividend payment to be accompanied by a notice disclosing the source of the distribution.

[3] Rule 19b–1(e) also requires that the application comply with rule 0–2 [17 CFR 270.02] under the Act, which sets forth the general requirements for papers and applications filed with the Commission pursuant to the Act and rules thereunder.

[4] This estimate is based on the average number of applications filed with the Commission pursuant to rule 19b–1(e) in the prior three-year period.

[5] The estimate for assistant general counsels is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The estimate for administrative assistants is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff previously estimated in 2009 that the average cost of board of director time was $4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,465.

[6] This estimate is based on the following calculations: $1515.50 (3.5 hours × $433 = $1515.50) plus $37 (0.5 hours × $74 = $37) plus $4465 equals $6017.50 (cost of one application).

[7] This estimate is based on the following calculation: $6017.50 (cost of one application) multiplied by 5 applications = $30,087.50 total cost.

[8] This understanding is based on conversations with representatives from the fund industry.

[9] This estimate is based on the following calculation: 10 hours multiplied by $400 per hour equals $4,000.

[10] This estimate is based on the following calculation: $4,000 multiplied by five (funds) equals $20,000.

[11] *See* 2016 Investment Company Fact Book, Investment Company Institute, *available at https://www.ici.org/pdf/2016_factbook.pdf.*

[12] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years and UITs. UITs may distribute capital gains biannually, annually, quarterly, or at other intervals. Additionally, a number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements.

[13] This estimate is based on the following calculation: 2,579 UITs multiplied by $50 equals $128,950.

respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 15, 2017.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–03423 Filed 2–21–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80044; File No. SR–NYSE–2016–71]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Amending Rule 104 To Delete Subsection (g)(i)(A)(III) Prohibiting Designated Market Makers From Establishing a New High (Low) Price on the Exchange in a Security the DMM Has a Long (Short) Position During the Last Ten Minutes Prior to the Close of Trading

February 15, 2017.

### I. Introduction

On October 27, 2016, New York Stock Exchange LLC (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending Rule 104 to delete subsection (g)(i)(A)(III), which prohibits Designated Market Makers (''DMMs'') from establishing, during the last ten minutes of trading before the close, a new high (low) price for the day on the Exchange in a security in which the DMM has a long (short) position (''Rule 104(g)(i)(A)(III) Prohibition''). The proposed rule change was published for comment in the **Federal Register** on November 17, 2016.[3]

On December, 20, 1016, the Commission extended to February 15, 2017, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.[4] The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposal.

### II. Description of the Proposal

Currently, under Exchange Rule 104(g)(i)(A)(III), a DMM with a long (short) position in a security cannot, during the last ten minutes before the close of trading, make a purchase (sale) in that security that results in a new high (low) price on the Exchange for that day.[5] The Exchange proposes to remove this prohibition from its rulebook.

The Exchange asserts that, in light of developments in the equity markets and in the Exchange's own trading model, Rule 104(g)(i)(A)(III) has lost its original purpose and utility.[6] Specifically, the Exchange asserts that, in today's electronic marketplace, where DMMs have replaced specialists, and control of pricing decisions has moved away from market participants on the Exchange trading floor, the purpose behind the Rule 104(g)(i)(A)(III) Prohibition is no longer necessary, and eliminating the prohibition would not eliminate other existing safeguards that prevent DMMs from inappropriately influencing or manipulating the close.[7]

The Exchange argues that the rationale behind preventing specialists from setting the price of a security on the Exchange in the final ten minutes of trading was to prevent specialists from inappropriately influencing the price of a security at the close to advantage a specialist's proprietary position.[8] In today's fragmented marketplace, according to the Exchange, a new high or low price for a security on the Exchange in the last ten minutes of trading does not have a significant effect on the market price for that security, because a new high or low price on the Exchange may not be the new high or low for a security—prices may be higher or lower in away markets, where the majority of intra-day trading in NYSE-listed securities takes place—and because any advantage to a DMM by establishing a new high or low on the Exchange during the last ten minutes can rapidly evaporate following trades in away markets. Because DMMs do not have the ability to direct or influence trading, or to control intra-day prices, that specialists had before the implementation of Regulation NMS, the Exchange asserts, the Rule 104(g)(i)(A)(III) Prohibition is anachronistic.[9]

### III. Proceedings To Determine Whether To Disapprove SR–NYSE–2016–71 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [10] to determine whether the proposal should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposal.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. In addition, Section 6(b)(5) of the Act prohibits the rules of an exchange from being designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Rule 104(g)(i)(A)(III) Prohibition was originally approved as part of the NYSE pilot program called the ''New Market Model.[12] As the Commission stated when approving the NYSE proposal to conduct the New Market Model pilot, ''[w]e carefully review trading rule proposals that seek to offer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79284 (Nov. 10, 2016), 81 FR 81222 (Nov. 17, 2016) (''Notice'').

[4] *See* Securities Exchange Act Release No. 79612 (Dec. 20, 2016), 81 FR 95205 (Dec. 27, 2016).

[5] *See* Exchange Rule 104(g)(i)(A)(III). Exchange Rule 104(g)(i)(A)(III)(2) provides two exceptions to this general prohibition.

[6] *See* Notice, 81 FR at 81223.

[7] *See id.* at 81222–81223.

[8] *See id.* at 81223.

[9] *See id.*

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46) (approving NYSE New Market Model pilot program).