Orders, it would have no meaningful impact on competition as few transactions in Midpoint Extended Life Orders would occur. In sum, if the proposal to assess no fees for executions of Midpoint Extended Life Orders is unattractive to market participants, it is likely that the Exchange will not gain any market share as a result and therefore no competitive impact.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18]

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–NASDAQ–2018–064 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–NASDAQ–2018–064. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–064, and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–17634 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83821; File No. SR–NYSE–2018–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend NYSE Rule 104 Governing Transactions by Designated Market Makers

August 10, 2018.

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 July 31, 2018, New York Stock Exchange LLC ("NYSE" or "Exchange") 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 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 consolidate and restructure subsections (g), (h) and (i) of Rule 104 governing transactions by Designated Market Makers ("DMM"). 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 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

The Exchange proposes to consolidate and restructure subsections (g), (h) and (i) of Rule 104 governing DMM transactions.

Background

Rule 104 sets forth the obligations of Exchange DMMs. Under Rule 104(a), DMMs registered in one or more securities traded on the Exchange are required to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. Rule 104(a) also enumerates the specific responsibilities and duties of a DMM, including: (1) Maintenance of a continuous two-sided quote, which

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[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

mandates that each DMM maintain a bid or an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO,'' together the ''NBBO'') for a certain percentage of the trading day,[4] and (2) the facilitation of, among other things, openings, re-openings, and the close of trading for the DMM's assigned securities, all of which may include supplying liquidity as needed.[5] Rule 104(f) imposes an affirmative obligation on DMMs to maintain, insofar as reasonably practicable, a fair and orderly market on the Exchange in assigned securities, including maintaining price continuity with reasonable depth and trading for the DMM's own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.

Rule 104(g) provides that transactions on the Exchange by a DMM for the DMM's account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. More particularly, Rule 104(g) describes certain transactions that are permitted to render the DMM's position adequate to the market's needs, including Neutral and Non-Conditional Transactions, and certain DMM transactions that are prohibited.

Rule 104(g)(i)(A)(I) defines Neutral Transactions as a purchase or sale by which a DMM liquidates or decreases a position. Neutral Transactions may be made without restriction as to price. However, the DMM's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market trend after effecting one or more Neutral Transactions. Such re-entry transactions should be in accordance with the immediate and anticipated needs of the market.

Rule 104(g)(i)(A)(II) defines Non-Conditional Transactions as a DMM's bid or purchase and offer or sale that establishes or increases a position, other than a transaction that reaches across the market to trade with the Exchange BBO. Non-Conditional Transactions may be made without restriction as to price in order to (i) match another market's better bid or offer price; (ii) bring the price of a security into parity with an underlying or related security or asset; (iii) add size to an independently established bid or offer on the Exchange; (iv) purchase at the published bid price on the Exchange; (v) sell at the published offer price on the Exchange; (vi) purchase or sell at a price between the Exchange BBO; and (vii) purchase below the published bid or sell above the published offer on the Exchange. As with Neutral Transactions, the DMM's obligation to maintain a fair and orderly market may also require re-entry on the opposite side of the market trend after effecting one or more Non-Conditional Transactions. Such re-entry transactions should be commensurate with the size of the Non-Conditional Transactions and the immediate and anticipated needs of the market.

Rule 104(g)(i)(A)(III) provides that, except as otherwise permitted by Rule 104, during the last ten minutes prior to the close of trading, a DMM with a long or short position in a security is prohibited from making a purchase or sale in such security that results in a new high or low price, respectively, on the Exchange for the day at the time of the DMM's transaction (''Prohibited Transactions'').[6]

Finally, Rule 104(h) addresses DMM transactions in securities that establish or increase the DMM's position. Rule 104(h)(i) defines a Conditional Transaction as a DMM transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer.[7]

Rule 104(h)(ii) permits ''Conditional Transactions'' without restriction as to price if they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. Thus, if a DMM establishes or increases a long position by buying from the Exchange best offer, or establishes or increases a short position by selling to the Exchange best bid, such transaction would be followed by the DMM quoting on the opposite side of the last transaction in order to dampen the impact of that transaction on the market.

The re-entry obligations for Conditional Transactions are set forth in Rule 104(h)(iii). Under Rule 104(h)(iii)(A), DMMs must re-enter within certain Exchange issued guidelines, called price participation points (''PPP''), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM is meeting its obligations.

Notwithstanding that a security may not have reached the PPP, the DMM may be required to re-enter the market immediately after a Conditional Transaction based on the price and/or volume of the DMM's trading in reference to the market in the security at the time of such trading. In such situations DMMs may or may not rely on the fact and circumstance that there may have been one or more independent trades following the DMM's trading to justify a failure to re-enter the market. As set forth in Rule 104(h)(iii)(C)(I) and (II), immediate re-entry is required after the following Conditional Transactions:

- A purchase that (1) reaches across the market to trade with an Exchange published offer that is above the last differently priced trade on the Exchange and above the last differently priced published offer on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published offer size; and
- a sale that (1) reaches across the market to trade with an Exchange published bid that is below the last differently priced trade on the Exchange and below the last differently priced published bid on the Exchange, (2) is 10,000 shares or more or has a market value of $200,000 or more, and (3) exceeds 50% of the published bid size.[8]

Rule 104(h)(iv) permits certain other Conditional Transactions without restriction as to price. Specifically, under subsection (h)(iv)(A), a DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange. Similarly, under subsection (h)(iv)(B), a DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange.

Finally, Rule 104(i) provides that re-entry obligations following such Conditional Transactions would be the same as the re-entry obligations for Non-Conditional Transactions pursuant to Rule 104(g).

Proposed Rule Change

The Exchange proposes to consolidate and restructure current Rules 104(g), (h)

[4] *See* Rule 104(a)(1).

[5] *See* Rule 104(a)(2)(3). Rule 104(e) further provides that DMM units must provide contra-side liquidity as needed for the execution of odd-lot quantities eligible to be executed as part of the opening, reopening, and closing transactions but that remain unpaired after the DMM has paired all other eligible round lot sized interest.

[6] Rule 104(g)(i)(A)(III) contains two exceptions to Prohibited Transactions: (1) Matching another market's better bid or offer price, and (2) bringing the price of a security into parity with an underlying or related security or asset.

[7] A DMM reaches across the market when the DMM buys from the NYSE offer or sells to the NYSE bid.

[8] For purposes of subsections (h)(iii)(C)(I) and (h)(iii)(C)(II), a Sweep is viewed as a transaction with the published bid or offer.

and (i), which would be deleted and incorporated as modified into a new subsection (g) titled ''Transactions by DMMs.'' The Exchange also proposes certain technical and conforming changes.[9]

As discussed below, proposed Rule 104(g) would revise the requirements for DMM transactions based on the type of trading by the DMM, rather than by reference to the DMM's position. As restructured, the proposed rule would replace the four current types of DMM transactions based on the DMM's position (Neutral, Non-conditional, Conditional and Prohibited) with a single, enhanced DMM transaction called an ''Aggressing Transaction'' that would retain existing re-entry requirements. During the final seconds of trading before the close of trading, Aggressing Transactions that would result in a new consolidated high (low) price for a security during that trading day would be prohibited with one exception discussed below.

Proposed Rule 104(g)(1)

Proposed Rule 104(g)(1) would be based on current Rule104(g)(i). Like current Rule 104(g)(i), proposed Rule 104(g)(1) would specify that transactions on the Exchange by a DMM unit for the DMM unit's account are to be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Proposed Rule 104(g)(1) would eliminate the definitions of Neutral and Non-Conditional Transactions [10] and retain Conditional Transactions, which would be enhanced and renamed ''Aggressing Transactions.''

In proposed Rule 104(g)(1)(A), the Exchange would define an Aggressing Transaction as a DMM unit transaction that:

(i) Is a purchase (sale) that reaches across the market to trade as the contra-side to the Exchange published offer (bid); and

(ii) is priced above (below) the last differently-priced trade on the Exchange and above (below) the last differently-priced published offer (bid) on the Exchange.

The proposed definition of Aggressing Transaction would be the same as the current definition of Conditional Transaction in Rule 104(h)(i) and (ii), except that Aggressing Transaction would not be defined by reference to whether the transaction increases or decreases the DMM's position. Accordingly, a DMM unit Aggressing Transaction would be any trade where the DMM is both reaching across the market and aggressively moves the price of the security.

Prohibited Transactions

The Exchange proposes to retain the existing prohibition on certain DMM transactions at the end of the trading day and to modify Prohibited Transactions in three ways.[11]

First, the Exchange proposes to modify the types of transactions that would be prohibited. Currently, the rule prohibits transactions by a DMM that create a new high or low price on the Exchange. The Exchange proposes instead to prohibit Aggressing Transactions that create a new consolidated high or low price. The Exchange believes that this proposed change would allow a DMM to quote aggressively in assigned securities without the risk of trading at a price that could create a new Exchange high or low price. For example, if the Exchange bid is $10.10, the Exchange offer is $10.12 and the last Exchange sale was $10.10, and the DMM unit is long and is seeking to narrow the spread by posting a bid at $10.11. Under the Exchange's current rule, if there were dark sell interest at $10.11, a DMM with a long position would be prohibited from attempting to post a bid at $10.11 because it could trade at that price and create a new high price on the Exchange. The current rule thus thwarts the ability of the DMM to meet their affirmative obligations to quote aggressively in assigned securities.

Moreover, the Exchange proposes to permit, consistent with the current exception in Rule 104(g)(i)(A)(III), Aggressing Transactions in the final ten seconds that would result in a new consolidated high (low) price for a security in order to bring the price of that security into parity with an underlying or related security or asset.[12]

Second, the Exchange proposes to eliminate the reliance on the DMM's position to determine whether to prohibit a transaction. The Exchange does not believe that the position of the DMM should be the defining feature of whether a trade is prohibited. Rather, as described above, the Exchange believes that whether a trade is prohibited should be based on whether the trade both aggressively takes liquidity and creates a new consolidated high or low price for the day. By eliminating reliance on position information, the proposed prohibited transaction would be more restrictive than the current rule because a DMM could not reach across the market to liquidate a position. However, the Exchange believes that this proposed change would support DMMs in meeting their affirmative obligations while at the same time preventing DMMs from aggressively taking liquidity and moving prices on the Exchange immediately before the closing auction.

Finally, the Exchange proposes to modify the period during which such transactions are prohibited.[13] To reflect the increased transparency regarding closing imbalances leading into the close and the speed and volume of transactions in today's electronic marketplace, the Exchange proposes to shorten the period during which certain transactions are prohibited to the final ten seconds of trading before the scheduled close of trading. The Exchange believes that limiting the period for Prohibited Transactions, as amended, is appropriate for a high-speed trading environment where trade speed is measured in microseconds and the final ten seconds of trading is an active trading period.[14] Moreover, as noted above, the transactions proposed to be prohibited would include liquidating transactions. Therefore, by shortening the time period restricting such trading, the DMMs would have more time to engage in liquidating transactions before the prohibition begins.[15]

The current rule prohibiting certain transactions in the last ten minutes of trading was adopted before the advent of rapid electronic trading and before the Exchange began disseminating

[9] The Exchange proposes the following technical and conforming changes: (1) Romanettes (i) through (vi) in Rule 104(b) and (i) through (iv) in Rule 104(f) would be replaced with numbers 1 through 6 and 1 through 4, respectively; (2) current subsection (j) would become new subsection (h); and (3) current subsection (k) would become new subsection (i).

[10] As discussed below, the re-entry obligations for Neutral and Non-Conditional Transactions would be retained and incorporated into proposed subsection (g)(2).

[11] *See* Rule 104(g)(i)(A)(III) and note 16, *infra.*

[12] This exception would continue to be appropriate because an independent party and not the DMM would set the price. *See* Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221, 71229 (December 8, 2006) (SR–NYSE–2006–76) (''Release No. 54860''). The Exchange does not propose to incorporate the other current exception permitting transactions during the last ten minutes of trading that result in a new Exchange high or low for the day in order to match another market's better bid or offer because a DMM could not create a new consolidated high or low price by matching a better away bid or offer.

[13] *See* Rule 104(g)(i)(A)(III).

[14] During the first quarter of 2018, the Exchange traded on average in excess of 1% of the total NYSE daily volume in the last 10 seconds of the trading day.

[15] Currently, during the last ten minutes of trading, DMMs are not prohibited from engaging in transactions that create a new high or low on the Exchange and are also a liquidating transaction. As proposed, Aggressing Transactions resulting in a new consolidated high or low prior to the final ten seconds of trading would be permitted but would be subject to the re-entry obligations contained in proposed Rule104(g)(2), discussed below.

Order Imbalance Information in its current form, as described in Rule 123C(6).[16] The Exchange believes that the availability of order imbalance information before the close of trading provides the public with updated trading information that was previously available only to DMMs. As a result, although the public now has significantly greater imbalance information leading into the close,[17] there has been no commensurate modernization of when the period for DMM prohibited transactions begins. Moreover, there is limited information asymmetry leading into the close; DMM algorithms only have access to the same data feeds that are available to the public. While Floor-based DMMs have access to additional non-public information, there is almost no manual trading [18] between 3:50 p.m. and 3:59:50 p.m., and thus limited opportunity for the Floor-based DMMs to act on that information. For example, Floor broker crowd interest is not revealed until 4:00 p.m. Further, DMMs do not determine their level of participation in the close until all interest has been entered for the close, including such Floor broker crowd interest, which is after 4:00 p.m. The Exchange accordingly believes that prohibiting transactions during the last ten seconds of trading would provide the same level of protection as intended by the current rule prohibiting certain transactions in the last ten minutes of trading.

To effect these changes, proposed Rule 104(g)(1)(B) would prohibit any Aggressing Transaction during the final ten seconds of trading before the scheduled close of trading that would result in a new consolidated high (low) price for a security during that trading day, except for Aggressing Transactions that would result in a new consolidated high (low) price for a security in order to bring the price of that security into parity with an underlying or related security or asset. Proposed Rule 104(g)(1)(B) would thus replace the current rule on Prohibited Transactions, a rule originally designed to prevent specialists from setting a price in the final ten minutes of trading in a security in which the specialist had a position.[19] Finally, the Exchange notes that the proposal is consistent with, and in no way diminishes or relieves the DMM of, the other obligations regarding the quality of the markets in securities to which DMMs are assigned under Rule 104.[20]

Proposed Rule 104(g)(2)

Proposed subsection (g)(2) would set forth the re-entry obligations for DMM transactions, which would be based on the current rule's re-entry obligations. Specifically, proposed Rule 104(g)(2) would provide that a DMM unit's obligation to maintain a fair and orderly market may require re-entry on the opposite side of the market after effecting one or more transactions. The proposed rule would provide that such re-entry should be commensurate with the size of the transaction(s) and the immediate and anticipated needs of the market, which are the same re-entry requirements specified in current Rules 104(g)(i)(A)(I)(3) and 104(g)(i)(A)(II)(3) for Neutral and Non-Conditional Transactions, respectively, as well as the types of Conditional Transactions referenced in current Rules 104(h)(iv) and 104(i).[21] Accordingly, these re-entry obligations would be applicable to DMM transactions other than Aggressing Transactions.

Proposed Rule 104(g)(2)(A) and (B) would specify the re-entry obligations for Aggressing Transactions. Following an Aggressing Transaction, proposed Rule 104(g)(2)(A) would require the DMM unit to re-enter the opposite side of the market at or before the applicable PPP for that security commensurate with the size of the Aggressing Transaction. The re-entry requirement for Aggressing Transactions set forth in proposed Rule 104(g)(2)(A) is based on the current re-entry requirements for certain Conditional Transactions set forth in current Rule 104(h)(iii).

Under proposed Rule 104(g)(2)(B), if the Aggressing transaction (i) is 10,000 shares or more or has a market value of $200,000 or more, and (ii) exceeds 50% of the published offer (bid) size, immediate re-entry on the opposite side of the market at or before the applicable PPP for the security commensurate with the size of the Aggressing Transaction would be required. The re-entry requirement for block-sized Aggressing Transactions set forth in proposed Rule 104(g)(2)(B) is based the current re-entry requirements for block-sized Conditional Transactions under Rule 104(h)(iii)(C). The Exchange proposes a clarifying amendment in proposed Rule 104(g)(2)(B), as compared to current Rule 104(h)(iii)(C), to provide that such re-entry must be at or before the applicable PPP for that security. The Exchange believes that this proposed change will provide greater detail in the

[16] The rule on Prohibited Transactions was adopted in 2006. *See* note 19, *infra.* In 2010, the Exchange enhanced the transparency of its marketplace and improved the quality of the closing auctions by modifying the dissemination of Order Imbalance Information pursuant to Rule 123C(6) to commence at 3:45 p.m. and including indicative closing price information and updated imbalance information in the pre-closing Order Imbalance data feeds. *See* Securities Exchange Act Release No. 61233 (December 23, 2009), 74 FR 69169 (December 30, 2009) (SR–NYSE–2009–111) (Approval Order) (''Closing Filing''). *See also* Securities Exchange Act Release No. 61616 (March 1, 2010), 75 FR 10533 (March 8, 2010) (SR–NYSE–2010–12) (Notice of Filing of Extension of Implementation Date of the Closing Filing).

[17] The Order Imbalance Information data feed provides automated, streaming information about real-time order imbalances that accumulate prior to the close of trading on the Exchange, and also includes the mandatory market-on-close (''MOC'') and limit-on-close (''LOC'') imbalance information that the Exchange is required to disseminate under NYSE Rule 123C(5). Order Imbalance Information is published every five seconds between 3:45 p.m. and 4:00 p.m. During this period, all market participants have access to the same imbalance information.

[18] For instance, in the first quarter of 2018, there were only 275 manual DMM trades that occurred in the last 9 minutes, 50 seconds of trading, representing just .0001% of the total shares traded on the NYSE in that time period.

[19] *See* Release No. 54860, 71 FR at 71221. When the prohibition was adopted in 2006, Prohibited Transactions were set forth in Supplementary Material .10 of Rule 104. 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. *See id.,* 71 FR at 71229. The rule was retained in 2008 when the Exchange's New Market Model transformed specialists into DMMs, who are no longer agents for the Exchange's limit order book and whose trading activity on the Exchange is limited to proprietary trading. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379, 64381 (October 29, 2008) (SR–NYSE–2008–46).

[20] In general, as noted above, transactions on the Exchange by a DMM for the DMM's account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock, and DMMs must refrain from causing or exacerbating excessive price movements. DMMs have affirmative obligations under Rule 104(a) to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. Specifically, Rule 104(f)(ii) sets forth the DMM's obligation to act as reasonably necessary to ensure appropriate depth and maintain reasonable price variations between transactions (also known as price continuity) and prevent unexpected variations in trading. Further, under Rule 123D(a), openings and reopenings must be fair and orderly, reflecting the DMM's professional assessment of market conditions at the time, and appropriate consideration of the balance of supply and demand as reflected by orders represented in the market. The Exchange supplies DMMs with suggested Depth Guidelines for each security in which a DMM is registered, and DMMs are expected to quote and trade with reference to the Depth Guidelines. *See* Rule 104(f)(iii).

[21] Current Rule 104(h)(iv) provides that two types of Conditional Transactions may be made without restriction as to price: (1) A DMM's purchase from the Exchange published offer that is priced above the last differently-priced trade on the Exchange or above the last differently-priced published offer on the Exchange ((h)(iv)(A)); and (2) a DMM's sale to the Exchange published bid that is priced below the last differently-priced trade on the Exchange or below the last differently-priced published bid on the Exchange ((h)(iv)(B)). Current Rule 104(i) provides that the re-entry obligations following transactions defined in Rule 104(h)(iv)(A) and (h)(iv)(B) are the same as for Non-Conditional Transactions pursuant to Rule 104(g)(i)(A)(3).

rule regarding the price at which the re-entry would be required.

Proposed Rule 104(g)(3)

Finally, proposed Rule 104(g)(3)(A) would provide that the Exchange would periodically issue PPP Guidelines that identify the price at or before which a DMM unit is expected to re-enter the market following an Aggressing Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee that a DMM unit is meeting its obligations. This portion of the proposed Rule is based on Rule 104(h)(iii)(A) without any differences.

Proposed Rule 104(g)(3)(B) would provide that, notwithstanding that a security may not have reached the PPP, the DMM unit may be required to re-enter the market immediately after an Aggressing Transaction based on the price and/or volume of the DMM unit's trading in reference to the market in the security at the time of such trading. In such situations, DMM units may or may not rely on the fact and circumstance that there may have been one or more independent trades following the DMM unit's trading to justify a failure to re-enter the market. Subsection (B) of the proposed rule is based on current Rule 104(h)(iii)(B).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that revising the requirements for DMM transactions based on the type of DMM trading rather than the DMM's position and introducing a new, enhanced DMM transaction called an ''Aggressing Transaction'' would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying and streamlining the requirements for DMM transactions. The proposal would eliminate four separate types of DMM transactions and introduce a simplified framework whereby all DMM transactions would be subject to general re-entry requirements based on the current re-entry obligations for Neutral, Non-Conditional and Conditional transactions, and specific re-entry requirements for Aggressing Transactions, except for Aggressing Transactions during the final ten seconds of trading that result in a new consolidated high or low, which would be prohibited.

The Exchange believes that the proposal would not be inconsistent with the public interest and the protection of investors. As noted, the proposed rule would carry over the requirement that all DMM transactions be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Further, DMM Aggressing Transactions would continue to require re-entry on the opposite side of the market at or before the applicable PPP for the security as warranted. Aggressing Transactions in the final ten seconds of trading that result in a new consolidated high (low) price for a security during that trading day would continue to be prohibited. These safeguards would reasonably ensure that DMM transactions bear a reasonable relationship to overall market conditions and that DMMs cannot destabilize, inappropriately influence or manipulate a security going into the close. In addition, the prohibition on Aggressing Transactions that would create a new consolidated high or low price of the trading day would maintain a bright-line rule that prohibits DMM transactions that aggressively take liquidity leading into the close. While the period during which such Aggressing Transactions would be shorter than under the current rule, the Exchange believes that the shorter time period reflects today's faster, more electronic markets, where trades and quotes are measured in microseconds, not minutes. Further, the proposed prohibition would be stricter than under current rules because DMMs would be prohibited from engaging in any Aggressing Transaction that creates a new consolidated high or low price for the day, even if such trade were a liquidating transaction.

Accordingly, the proposed rule change is designed to address the potential risk of DMM trading destabilizing the market leading into the close in today's market conditions, while at the same time revising which transactions would be prohibited to promote DMMs quoting more aggressively in their assigned securities. The Exchange therefore believes that the proposed amendments to the types of transactions that would be prohibited would remove impediments to and perfect the mechanism of a free and open market and a national market system because DMMs would now be able to quote more aggressively in their assigned securities during the period for prohibited transactions.

Moreover, the numerous obligations currently imposed by Rule 104 would in no way be altered or diminished by the proposal. The Exchange does not believe that the balance of benefits and obligations under Rule 104 would be impacted by this proposed rule change. DMMs would continue to be prohibited from engaging in specified transactions leading into the close. The Exchange is simply proposing to modernize this obligation to reflect the realities of today's trading environment. Moreover, the proposed rule would carry over the requirement that all DMM transactions be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. These safeguards would reasonably ensure that DMM transactions bear a reasonable relationship to overall market conditions and that DMMs cannot destabilize, inappropriately influence or manipulate a security going into the close. For the same reasons, the proposed prohibition would not alter or disrupt the balance between DMM benefits and obligations of being an Exchange DMM.

Finally, revising the requirements for DMM transactions based on the type of DMM trading rather than the DMM's position would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying and streamlining the requirements for DMM transactions.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 proposes amendments to the rule governing DMM obligations to simplify and streamline the requirements for DMM transactions. The Exchange believes that the proposal would promote competition by allowing DMMs to quote more aggressively in the final minutes of trading, thereby permitting DMMs to remain competitive with other traders both on the Exchange and on other trading venues. Without the proposed change, the Exchange believes that in the final ten minutes of trading, DMMs are at a competitive disadvantage because they are restricted

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

from engaging in quoting activity that does not reach across the market, but that could result in a transaction that is a new high or low on the Exchange, but is not a new consolidated high or low price. The Exchange believes that the proposal is pro-competitive because revising which transactions would be prohibited would promote DMM quoting more aggressively in their assigned securities, thereby enhancing the ability of DMMs to meet their affirmative obligation under Rule 104. Similarly, shortening the time period restricting DMM trading, in addition to being more appropriate for the current high-speed trading environment, would provide DMMs with more time to engage in liquidating transactions before the prohibition begins, thereby enhancing DMM market making in the final minutes of trading. 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 foster a fair and orderly marketplace without diminishing the balance of benefits and obligations under Rule 104 or altering or diminishing the numerous obligations currently imposed by Rule 104 on DMMs.

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–NYSE–2018–34 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2018–34. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–34 and should be submitted on or before September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2018–17630 Filed 8–15–18; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83819; File No. SR–ICC–2018–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

August 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] and Rule 19b–4,[2] notice is hereby given that on July 31, 2018, ICE Clear Credit LLC (''ICC'') 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 ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise the ICC Treasury Operations Policies and Procedures (''Treasury Policy''). These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

(a) Purpose

ICC proposes revisions to its Treasury Policy. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it

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

[2] 17 CFR 240.19b–4.