which today burden partnerships over corporations. The deletions of Rules 902 and 907(a) will remove a current burden on competition which requires members and member organizations that are partnerships to disclose unnecessary information as compared to other corporate entities not structured as a partnership. The deletion of 907(b) will remove a current burden on competition by eliminating the need to identify an officer that is a member of the exchange which will have no practical effect on the exchange’s interaction with the company. The Exchange does not believe that there is any impact on intermarket competition.

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

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)(iii) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder. 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. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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);
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx–2016–36 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–Phlx–2016–36. 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–Phlx–2016–36 and should be submitted on or before April 26, 2016.

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

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–07682 Filed 4–4–16; 8:45 a.m.]
A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose


The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require member organizations to comply with the applicable data collection requirements of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process). During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted. Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.

The Plan contains requirements for collecting and transmitting data to the Commission and to the public. Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved. Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information to the Commission and to the public. The Plan requires Appendix B.I and B.II data to be submitted by Participants.
that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is proposing new Rule 67(b)—Equities to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 67(b)(1)—Equities requires that a member organization that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a member organization that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 67(b)(2)—Equities provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Data Collection Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the member organization that generated the data. Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker 24 engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 67(b)(3)—Equities to gather data about a Market Maker’s participation in Pilot Securities and Pre-Pilot Data Collection Securities.

Proposed Rule 67(b)(3)(A)—Equities provides that a member organization that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in accordance with its status as a registered Market Maker. The Exchange is proposing new Rule 11.27(b) which also sets forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 67—Equities to require a member organization that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 67(b)—Equities to FINRA, which is a Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan’s data collection requirements.

Proposed Rule 67(b)(3)(C)—Equities proposes that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 67(b)(3)(A)—Equities and Rule 67(b)(3)(B)—Equities above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the daily market maker measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period profil.
Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end. Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing to adopt Supplementary Material .10 to proposed Rule 67(b)—Equities to clarify that, for purposes of reporting requirement in Appendix B.II(n), a Trading Center shall report “y” to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “n” for all other instances.26

The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (i.e., Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (i.e., Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n). Supplementary Material .20 to proposed Rule 67(b)—Equities requires that member organizations populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.27 Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor (“SIP”) calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock’s reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies the quotation as non-executable. When the other side of the market reaches the applicable price band (e.g., the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of “Y” to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of “N” to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Supplementary Material .20 to proposed Rule 67(b)—Equities also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will
indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan’s quoting and trading requirements, and could otherwise compromise the integrity of the data.

Supplementary Material .30 to proposed Rule 67(b)—Equities relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22). The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.29

Supplementary Material .40 to proposed Rule 67(b)—Equities relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Supplementary Material .40 to proposed Rule 67(b)—Equities.30 This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Supplementary Material .50 to proposed Rule 67(b)—Equities addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed. The Exchange and the other Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing Supplementary Material .50 to proposed Rule 67(b)—Equities to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Supplementary Material .60 to proposed Rule 67(b)—Equities to clarify the scope of the Plan as it relates to member organizations that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a member organization that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer’s position; or (3) completing the fractional share portion of an order shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Supplementary Material .60 to proposed Rule 67(b)—Equities to make this clarification.

The Exchange is proposing Supplementary Material .70 to proposed Rule 67(b)—Equities to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the member organization’s DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the environment that [sic] the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.32

29 Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt.

30 The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra note 26.

31 The Exchange notes that where a member organization purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to Appendix B of the Plan.

32 In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, e.g., by May 6, 2016. See Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program). See also Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J.
The Exchange is proposing Supplementary Material .80 to proposed Rule 67(b)—Equities to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out (“LIFO”)-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Supplementary Material .80 to proposed Rule 67(b)—Equities to make this change.33 The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.34

Finally, the Exchange is proposing Supplementary Material .90 to proposed Rule 67(b)—Equities to address the securities that will be used for data collection purposes prior to the commencement of the Pilot Period. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities. The Exchange is therefore proposing Supplementary Material .90 to proposed Rule 67(b)—Equities to define “Pre-Pilot Data Collection Securities” as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the pre-pilot measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period. The pre-pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month pre-pilot period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Data Collection Security.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act 35 in general, and furthers the objectives of Section 6(b)(5) of the Act 36 in particular, in that it is designed 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 this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to member organizations in furtherance of compliance with the Plan.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for member organizations that operate Trading Centers will apply equally to all such member organizations, as will the data collection requirements for Market Makers.

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.

33 Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

34 The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, supra note 26.


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

Because the 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) of the Act and Rule 19b–4(f)(6) thereunder.38

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act39 normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)40 permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments on April 4, 2016, the date upon which the data collection requirements of the Plan become effective.41 Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.42

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEMK–2016–40 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–NYSEMK–2016–40. 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–NYSEMK–2016–40, and should be submitted on or before April 26, 2016.