

of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade shares of the AdvisorShares KIM Korea Equity ETF under NYSE Arca Equities Rule 8.600. On May 13, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission published notice of the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on May 23, 2016.⁴ On May 23, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.⁵ On July 7, 2016, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ On August 18, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.⁹ The Commission received no comments on the proposed rule change. On September 28, 2016, the Exchange withdrew the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79071; File No. SR–NYSE–2016–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Supplementary Material .20 to Rule 103

October 7, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on September 22, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Supplementary Material .20 to Rule 103 (“NYSE Rule 103.20”), to reduce the Minimum Net Liquid Assets requirement for Designated Market Maker (“DMM”) units. The proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend NYSE Rule 103.20, which sets forth the net liquid assets requirements for a member organization that operates as a DMM unit on the Exchange,⁴ to reduce the Minimum Net Liquid Assets requirement for DMM units.

Current Rule

Rule 103.20 sets forth a Net Liquid Assets requirement for each DMM unit⁵ in addition to the SEC Net Capital Rule⁶ minimum net capital requirement applicable to market-making activities. The purpose of the Exchange’s requirement is to reasonably assure that each DMM unit maintains sufficient liquidity to carry out its obligation to maintain a fair and orderly market in its assigned securities in times of market stress. The formula for the current net liquid assets requirement was established in July 2011, which resulted in the aggregate net liquid assets of all DMM units equaling at least \$125 million.⁷

Under current Rule 103.20(b), each DMM unit must maintain or have allocated to it Net Liquid Assets that are the greater of (1) \$1 million, or (2) \$125,000 for each one-tenth of one percent (0.1%) of Exchange transaction dollar volume⁸ in its registered securities. A DMM unit must inform the Exchange immediately whenever the DMM unit is unable to comply with these requirements.⁹

Current Rule 103.20(a) defines “Net Liquid Assets” as the sum of (A) “Excess Net Capital” and (B) “Liquidity” dedicated to the DMM unit. Excess Net Capital has the same meaning as the term excess net capital as computed in accordance with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nysearca-2016-64/nysearca201664-1.pdf>.

⁴ See Securities Exchange Act Release No. 34–77847 (May 17, 2016), 81 FR 32364.

⁵ Amendment No. 2 replaced and superseded the original filing in its entirety. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nysearca-2016-64/nysearca201664-2.pdf>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 78240, 81 FR 45332 (July 13, 2016).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 78614, 81 FR 57981 (August 24, 2016).

¹⁰ 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.

⁴ Pursuant to Rule 2(j), a DMM unit is defined as a member organization or unit within a member organization that has been approved to act as a DMM unit under Rule 98. Pursuant to Rule 2(i), a DMM is defined as an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. All references to rules herein are to NYSE rules, unless otherwise noted.

⁵ All DMMs on the Exchange are required to comply with Rule 104.

⁶ See 17 CFR 240.15c3–1.

⁷ See Securities Exchange Act Release No. 64918 (July 19, 2011), 76 FR 44390 (July 25, 2011) (SR–NYSE–2011–35) (“Release No. 64918”).

⁸ The term “Exchange transaction dollar volume” means the most recent Statistical Data, calculated and provided by the NYSE on a monthly basis. See Rule 103.20(a)(4).

⁹ See Rule 103.20(c)(1)(A).

SEC Net Capital Rule,¹⁰ which means the amount identified as item number 3770 of SEC Form X-17A-5 (“FOCUS Report”), except for DMM units that compute net capital under the alternative standard, for which it would mean item number 3910 of the FOCUS Report. Liquidity is defined as undrawn or actual borrowings that are dedicated to the DMM unit’s business, as specified in Rule 103.20(a)(3)(A)–(C).

If two or more DMM units are associated with each other and deal for the same DMM unit account, then the Net Liquid Assets requirements of Rule 103.20 applies to such DMM units as one unit, rather than to each DMM unit individually. Any joint account must be approved by the Exchange.¹¹ The Exchange may allow a DMM unit to operate despite noncompliance with the provisions of the minimum requirements of Rule 103.20, for up to five business days from the date the DMM notifies the Exchange of such condition.¹²

Background and Proposed Rule Change

On July 25, 2006, the SEC approved amendments to the predecessor of current Rule 103.20 that set the Net Liquid Asset requirement applicable to specialist member organizations at \$1 billion.¹³ In February 2008, based on significant changes in the NYSE’s market structure resulting in reduced specialist participation, position levels, and performance during periods of high market volatility, this amount was reduced to \$250 million.¹⁴ In July 2011, once again relying on significant changes in the NYSE’s market structure as well as market-wide regulatory and trading developments and trends, the Net Liquid Asset requirement in Rule 103.20 was reduced to the current \$125 million.¹⁵

A determination of whether the Net Liquid Assets requirement will be adequate to support the liquidity needs of DMM units to perform their obligations to the market during periods of market stress involves consideration and assessment of many factors, including market structure developments, market fragmentation,

DMM unit end-of-day inventory positions and position duration, and the use of technology to manage market volatility. Since July 2011, the Exchange has continued to regularly assess these factors.

Market-wide developments since 2011 have continued to dampen volatility and reduce DMM unit risk levels. Specifically, the implementation in April 2013 of market-wide volatility controls as part of the Regulation NMS Plan to Address Extraordinary Market Volatility (“Limit Up/Limit Down”) significantly mitigated industry-wide risks by limiting single-stock and market-wide volatility throughout the trading day.¹⁶ Additional initiatives since 2011, including enhanced technology resulting in reduced trading latency levels, clearing organization risk control enhancements, tighter percentage triggers on market-wide circuit breakers,¹⁷ pre-trade risk controls to prevent the routing of orders that exceed credit or capital thresholds (*i.e.*, SEC Rule 15c3-5,¹⁸ the “Market Access Rule”), and clearly defined Clearly Erroneous Execution parameters and processes,¹⁹ have all contributed to reducing the potential for significant and/or rapid movements in the market and to help DMM units satisfy their obligation to maintain an orderly market in assigned securities in times of market stress.

Since 2011, market fragmentation has increased the amount of off-exchange trading in NYSE-listed securities. Trading on the Trade Reporting Facility (“TRF”) in NYSE-listed securities increased from 29.8% year-to-date between January–May 2011 to 34.7% year-to-date between January–May 2016. There are currently 13 competing exchanges trading NYSE-listed securities and one-third of NYSE consolidated volume is traded off-exchange on over 30 dark pools and over 200 upstairs trading desks.

The net liquid asset requirement should be reasonably related to the amount of trading that DMM units transact within the NYSE’s market share and dollar value traded. The Exchange believes that as NYSE share and dollar volume has declined, the amount of net liquid assets required to meet the DMM unit’s obligations should similarly decline. The Exchange notes that both the overall consolidated Tape A volume as well as the Exchange’s average daily

volume of shares traded have declined since 2011 (6% and 13% YTD, respectively), therefore resulting in less trading both market-wide and at the Exchange in the securities assigned to DMMs.

The growth in NYSE’s Supplemental Liquidity Provider (“SLP”) program, implemented in October 2008 and made permanent in July 2015,²⁰ has increased liquidity provider participation across a broader group of market participants, thereby also helping to reduce DMM risk. Today, around one-third of liquidity provider participation comes from nine firms participating in the SLP program.

The disparity between the current capital requirement and DMM gross inventory levels is also significant. End-of-day DMM average gross inventory positions have declined 27% from \$74 million in the January–June 2011 period to \$54 million in the January–June 2016 period, reducing overnight risk exposure. The current \$125 million capital requirement is 2.3 times greater than the gross inventory level of \$53 million (long market value plus short market value) and 34 times greater than the average net inventory level of \$3.6 million (long market value—short market value).

DMM units are also putting fewer dollars at risk on a given trade, and less capital is needed to support the resultant positions. This trend is largely the result of the DMM units’ increased use of algorithms to trade in smaller order sizes to reduce risk exposure. The industry’s increased use of algorithms to trade in small order sizes to reduce risk exposure has resulted in a 14% decline in the average NYSE intraday trade size from 2011 to 2016 year-to-date through May 2016, resulting in fewer DMM shares at risk on a given trade.

Moreover, DMM liquidity provider and other payments to DMMs have increased since 2011. In particular, DMM rebates per share have increased from \$0.0015, \$0.0025 and \$0.0030 in mid-2011 to \$0.0027, \$0.0031, \$0.0034 today. Further, quote market data revenue payments have been expanded to cover less-active securities under 1.5 million in consolidated volume versus 1 million in consolidated volume in 2011, and monthly flat payments have been introduced between \$100 to \$500 per security for less active securities under 1.5 million in consolidated volume. By reducing the DMM’s costs per share traded, the Exchange believes that higher trading rebates and other

¹⁰ See note 6 *supra*.

¹¹ See Rule 103.20(b)(3).

¹² See *id.* at (c)(2).

¹³ See Securities Exchange Act Release No. 54205 (July 25, 2006), 71 FR 43260 (July 31, 2006) (SR–NYSE–2005–38) (approving amendments to NYSE Rules 104 and 123E (“Specialist Combination Review Policy”) that changed the capital requirements of specialist organizations). See also NYSE Information Memo 06–56 (August 2, 2006).

¹⁴ See Securities Exchange Act Release No. 57272 (February 5, 2008), 73 FR 8098 (February 12, 2008) (SR–NYSE–2007–101).

¹⁵ See note 7 *supra*.

¹⁶ See Securities Exchange Act Release No. 77679 (April 21, 2016), 81 FR 24908 (April 27, 2016) (File No. 4–631) (Order approving 10th Amendment to the Limit Up Limit Down Plan).

¹⁷ See Rule 80B.

¹⁸ See 17 CFR 240.15c3–5.

¹⁹ See Rule 128.

²⁰ See Securities Exchange Act Release No. 75578 (July 31, 2015), 80 FR 47008 (August 6, 2015) (SR–NYSE–2015–26).

payments to DMMs have reduced overall DMM trading risk.

Further, the DMM units' increasing use of trading technology and faster NYSE execution speeds enable DMMs to reduce order exposure time and better manage the risks of positions held. Faster NYSE executions speeds and DMM units' use of algorithms allow them to adjust positions quickly in response to changing market dynamics. The NYSE has also reduced the time needed to incorporate market information into quotes, thereby allowing for better risk controls mechanisms by DMMs. Median order-to-acknowledgement latency for NYSE gateways declined 81% between June 2011 and June 2016.²¹

Based on the foregoing, the Exchange believes that it is appropriate to reduce the Net Liquid Assets requirement for all DMM units by an additional 40% to \$75 million.

The Exchange notes that the Exchange and FINRA will continue to assess DMM capital requirements and monitor capital positions on a daily basis.

The Exchange will notify DMM units of the implementation date of this rule change via a Member Education Bulletin.

The proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that DMM units would have in complying with the proposed change.

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, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system by reducing the burden on DMM units to maintain net liquidity while still reasonably ensuring that DMM units have sufficient liquidity to carry out their obligations to maintain an orderly market in their assigned securities in times of market stress. In this regard, the Exchange notes that overall DMM unit risk levels have continued to decline due to, among other things, implementation of market-wide volatility controls (e.g., Limit Up/Limit Down price controls), enhanced technology resulting in reduced trading latency levels, clearing organization risk control enhancements, tighter percentage triggers on market-wide circuit breakers, pre-trade risk controls (i.e., the Market Access Rule), and clearly defined Clearly Erroneous Execution parameters and processes. These initiatives have contributed to reducing the potential for significant and/or rapid movements in the market and provide support to DMM units in satisfying their obligation to maintain an orderly market in assigned securities in times of market stress. The Exchange further believes that continued market fragmentation, the decline in the average value of DMM units' end-of-day position inventories and the shorter duration of positions, lower per share trading costs and improved technology to manage market risk also support the proposed rule change.

The Exchange further believes that the proposed change would protect investors and the public interest by reducing existing barriers to entry for new DMM units and mitigating the potential loss of existing DMM units. Stabilizing and increasing the pool of DMM units with a more efficient financial structure would be beneficial to the Exchange and would also enhance market quality and thereby support investor protection and public interest goals. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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 proposed change is designed to amend the structure of DMM unit financial requirements. This proposed change would eliminate a potential barrier to entry for new DMM units interested in operating on both markets, thereby promoting competition.

The Exchange notes that market makers and traders on other U.S. equity exchanges are not subject to net capital requirements beyond those required by the SEC Net Capital Rule. Nonetheless, DMM units have unique affirmative obligations and the Exchange continues to believe that it is appropriate that their financial requirements be higher than other market participants. The proposal would support competition by making DMM unit financial requirements more manageable for member organizations, including both existing and potential future DMM units, and would thereby promote greater interest in seeking DMM unit appointments on the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁴ and Rule 19b-4(f)(6) thereunder.²⁵ 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

²¹ The Exchange notes that multi-asset market makers mitigate risk by hedging between different products. Technology advances like use of microwave towers has reduced data transmission times helping firms to better manage risks and hedge price differences between equities/ETFs generally trading in the New York area and futures generally trading in the Chicago area.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-64 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-NYSE-2016-64. 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-NYSE-2016-64 and should be submitted on or before November 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79059; File No. SR-ISEMercury-2016-17]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend a Current Billing Practice With Respect to Billing Disputes

October 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 22, 2016, ISE Mercury, LLC ("ISE Mercury" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 amend a current billing practice with respect to billing disputes.

The text of the proposed rule change is available on the Exchange's Web site at www.ise.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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Schedule of Fees to change the timeframe within which Members must dispute billing. Today, ISE Mercury Members must submit all disputes no later than ninety calendar days after receipt of an Exchange invoice. After ninety calendar days, all fees assessed by the Exchange are considered final. The Exchange is proposing to amend the policy from ninety to sixty days to submit a dispute. Today, the NASDAQ PHLX LLC ("Phlx"), NASDAQ BX, Inc. ("BX") and The NASDAQ Options Market LLC ("NOM") all have a sixty day timeframe within which to dispute option invoices.³

The Exchange provides Members with both daily and monthly fee reports and thus believes Members should be aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Members dispute an invoice within this time period will encourage them to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (*e.g.* applicable fees and order information) is still easily and readily available. This

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ 17 CFR 240.19b-4(f)(6)(iii).

²⁸ 15 U.S.C. 78s(b)(2)(B).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Phlx's Pricing Schedule. See also NOM and BX Rules at Chapter XV, Section 7.