

aware of interest represented by floor brokers, which is not publicly disseminated.<sup>44</sup> When offsetting an imbalance during the closing auction, DMM interest trades at parity with limit orders on the Exchange order book, and DMM interest takes priority over limit-on-close orders with a price equal to the closing price and over closing-offset orders.<sup>45</sup> In approving the entire set of advantages given to DMMs in 2008 through the New Market Model, the Commission specifically assessed “whether the rewards granted to DMMs . . . are commensurate with their obligations” and found that the proposed New Market Model pilot reflected “an appropriate balance of DMM obligations against the benefits provided to DMMs.”<sup>46</sup>

In proposing to remove the Prohibited Transactions Rule, however, NYSE and NYSE MKT have failed to adequately explain or justify how the proposed alteration to the balance of benefits and obligations of a DMM previously approved by the Commission is consistent with Section 6(b)(5) of the Exchange Act, or how allowing DMMs to aggressively take liquidity in the last ten minutes of trading is both consistent with a DMM’s obligation to maintain a fair and orderly market in its assigned securities and designed to prevent fraudulent or manipulative acts and practices regarding the closing auction, for which a DMM has crucial responsibilities.

The Exchanges and Citadel in their comment letters argue that changes in market structure such as the inability of DMMs, compared to specialists, to “set prices” in their assigned securities, and the movement of trading volume in NYSE-listed securities away from the NYSE, support the elimination of the Prohibited Transactions Rule. But, as noted above, the Prohibited Transactions Rule was included in the New Market Model rule filing that established the role of DMMs, and the market-share statistics offered by Citadel—which purportedly establish the relatively weak pricing power of a DMM<sup>47</sup>—fail to acknowledge that the Exchanges have a dominant market share in the closing auction,<sup>48</sup> and that a DMM has discretion and informational advantages that place the DMM in a unique position to choose its own level

of participation in the auction and to influence the closing price.<sup>49</sup> Additionally, the argument by Citadel that the current prohibition creates an uneven playing field, and that it limits DMMs’ “ability to provide competitive quotations,”<sup>50</sup> fails to address that DMMs have unique privileges on NYSE and NYSE MKT and that the proposed rule change is not limited to circumstances in which DMMs would be allowed to quote competitively and provide liquidity, but would also allow them to aggressively take liquidity.

Additionally, while NYSE and NYSE MKT have argued that the proposal is consistent with the Exchange Act because remaining exchange rules address the possibility of disruptive or improper DMM trading during the last ten minutes of the day, the Commission does not believe that NYSE and NYSE MKT have met their burden to demonstrate that these other rules—which require the exercise of judgment as to what is “reasonable,” “excessive,” “appropriate,” or “commensurate”<sup>51</sup>—are adequate substitutes for a clear, meaningful, and enforceable bright-line rule that limits aggressive DMM trading at a particularly sensitive and important time of the trading day and that addresses the risk of destabilizing or even manipulative activity. Additionally, the Commission believes that NYSE and NYSE MKT have merely asserted that, but not explained how, existing surveillances can act as an adequate substitute for this bright-line rule.

Thus, because the Exchanges’ arguments in favor of the proposed rule changes do not adequately address significant issues raised by the proposals, the Commission does not find that the proposed rule changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Exchange Act.

## V. Conclusion

*It is therefore ordered that*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>52</sup> the proposed rule changes (SR–NYSE–2016–71 and SR–NYSEMKT–2016–99) be, and hereby are, *disapproved*.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2017–15195 Filed 7–19–17; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

[Delegation of Authority: 437]

### Delegation of Authority to the Director of the Office of U.S. Foreign Assistance Resources To Concur in Assistance Programs

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act (22 U.S.C. 2651a) and 10 U.S.C. 333, I hereby delegate to the Director the Office of U.S. Foreign Assistance Resources, to the extent authorized by law, the authority to concur in programs authorized by section 333 of title 10 of the U.S. Code.

Notwithstanding this delegation of authority, any function or authority delegated herein may be exercised by the Secretary or a Deputy Secretary. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation of authority shall be published in the **Federal Register**.

Dated: May 1, 2017.

**Rex W. Tillerson,**

*Secretary of State.*

[FR Doc. 2017–15226 Filed 7–19–17; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

[Public Notice: 10062]

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Delirious: Art at the Limits of Reason, 1950–1980” Exhibition

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No.

<sup>53</sup> 17 CFR 200.30–3(a)(12).

<sup>44</sup> See Exchange Rule 104(j); see also NYSE Rule 123C and NYSE MKT Rule 123C—Equities.

<sup>45</sup> See NYSE Rule 123C(7)(b); NYSE MKT Rule 123C(7)(b)—Equities.

<sup>46</sup> Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379, 64388–89 (Oct. 29, 2008) (SR–NYSE–2008–46).

<sup>47</sup> See Citadel Letter, *supra* note 7, at 2.

<sup>48</sup> See *supra* note 39 and accompanying text.

<sup>49</sup> See *supra* notes 42–44 and accompanying text.

<sup>50</sup> Citadel Letter, *supra* note 7, at 2–3.

<sup>51</sup> See *supra* notes 25 & 40 and accompanying text.

<sup>52</sup> 15 U.S.C. 78s(b)(2).