

downloaded.<sup>30</sup> The Web site will include (directly or through a link to [www.nextshares.com](http://www.nextshares.com)) additional Fund information updated on a daily basis, including the prior business day's NAV, and the following trading information for that business day expressed as premiums/discounts to NAV: (a) Intraday high, low, average, and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV ("Closing Bid/Ask Midpoint"); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading ("Closing Bid/Ask Spread").<sup>31</sup> The Web site will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time.

The Exchange represents that all statements and representations made in the filing regarding: (a) The description of the Fund's portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or IIVs, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>32</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rules 5800, *et seq.*

This approval order is based on all of the Exchange's representations, including those set forth above, in the

<sup>30</sup> The Exchange represents that the Web site containing this information will be [www.hartfordfunds.com](http://www.hartfordfunds.com).

<sup>31</sup> The Exchange represents that the Web site containing the Fund's NAV will be [www.hartfordfunds.com](http://www.hartfordfunds.com) and that all other information listed will be made available on [www.nextshares.com](http://www.nextshares.com), which can be accessed directly and via a link on [www.hartfordfunds.com](http://www.hartfordfunds.com).

<sup>32</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

Notice, and Amendment Nos. 3 and 4,<sup>33</sup> and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5745 and the conditions set forth in this proposed rule change to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 3 and 4, is consistent with Section 6(b)(5)<sup>34</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>35</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-NASDAQ-2017-025), as modified by Amendment Nos. 3 and 4, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-09420 Filed 5-9-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80590; File No. SR-NYSEMK-2017-01]

### Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Equity Trading Rules To Transition Trading on the Exchange From a Floor-Based Market With a Parity Allocation Model to a Fully Automated Market With a Price-Time Priority Model on the Exchange's New Trading Technology Platform, Pillar

May 4, 2017.

#### I. Introduction

On January 25, 2017, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule

<sup>33</sup> *See supra* notes 3 and 4.

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

change to adopt new equity trading rules to transition trading on the Exchange from a floor-based market with a parity-allocation model to a fully automated market with price-time-priority allocation model on the Exchange's new trading technology platform, Pillar. The proposed rule change was published for comment in the **Federal Register** on February 15, 2017.<sup>3</sup> On March 29, 2017, the Commission designated a longer period for action on the proposed rule change.<sup>4</sup> On April 24, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission received no comments on the proposal. The Commission is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis and soliciting comments on Amendment No. 1.

#### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to adopt new equities trading rules to facilitate the transition to Pillar, a new trading-technology platform, in order to operate as a fully-automated cash equities market. As part of this transition, the Exchange would move from the current floor-based market with a parity-allocation model to a fully automated market with a price-time-priority allocation model. Consequently,

<sup>3</sup> *See* Securities Exchange Act Release No. 79993 (Feb. 9, 2017), 82 FR 10814 (Feb. 15, 2017) ("Notice").

<sup>4</sup> *See* Securities Exchange Act Release No. 80337 (Mar. 29, 2017), 82 FR 16459 (Apr. 4, 2017).

<sup>5</sup> In Amendment No. 1, the Exchange proposes to: (1) Amend proposed Exchange Rule 7.35E(a)(10)(A) to specify the "Auction Collar" as the greater of \$0.50 or 10% away from the Auction Reference Price and delete the specified percentages to conform to rule filing SR-NYSEArca-2016-130; (2) amend proposed Exchange Rule 7.35E(d)(2) to note that the Closing Auction Imbalance Freeze will begin ten minutes (rather than one minute) before the schedule time for the Closing Auction; (3) amend proposed Exchange Rule 7.35E(f)(2) to reject certain orders until after the Auction Processing Period for the IPO Auction has concluded; (4) amend proposed Exchange Rule 7.35E(h)(3)(A) and (B) to define "previously-live orders" for Core Open Auction, Trading Halt Auction, Closing Auction, and IPO Auction, and how unexecuted orders would be processed, when the Exchange transitions from continuous trading from a prior trading session; (5) amend proposed Exchange rule 7.31E(h)(3)(A) to specify that Discretionary Pegged Orders do not participate in any auctions; (6) amend proposed Exchange Rule 7.34E(c)(1)(A) to add that Discretionary Pegged Orders may not be entered before or during the Early Trading Session; (7) amend proposed Exchange Rule 7.46E to reflect recent changes to publication dates with respect to the Tick Size Pilot Plan; and (8) state that the Pillar transition is anticipated to occur in the third quarter of 2017. The Exchange represents that most of the amendments relate to a recent proposed rule change (SR-NYSEArca-2017-47) by NYSE Arca, Inc. ("NYSE Arca").

Exchange floor-based designated market makers (“DMMs”) would be replaced by Electronic DMMs, and the Exchange would no longer support Supplemental Liquidity Providers or floor brokers as a separate class of participant on the Exchange.<sup>6</sup>

The Exchange represents that the proposal is based on the trading rules of the NYSE Arca Equities exchange (“NYSE Arca Equities”) and current Exchange equities rules. NYSE Arca Equities already uses Pillar, the same trading technology platform that the Exchange proposes to adopt.<sup>7</sup> The Exchange proposes to adopt Exchange Rules 1E, 2E, 3E, 6E, 7E, 12E, and 13E to cover cash equities trading on the Pillar platform.<sup>8</sup> Exchange Rule 1E would cover definitions. Exchange Rule 2E would cover equity trading permits. Exchange Rule 3E would cover organization and administration of the Exchange. Exchange Rule 6E would cover business conduct. Exchange Rule 7E would cover equities trading. Exchange Rule 12E would cover arbitration. Exchange Rule 13E would cover liability of directors and the Exchange.

The Exchange would announce the transition of its cash equities trading to Pillar, if approved by the Commission, by a Trader Update. The Exchange anticipates that the transition would occur in the third quarter of 2017. If the Exchange transitions to Pillar trading

<sup>6</sup> The Exchange would also expand unlisted trading privileges to all NMS Securities, including securities listed on the New York Stock Exchange LLC, NYSE Arca, the Nasdaq Stock Market LLC (“Nasdaq”), and Bats BZX Exchange, Inc. See Securities Exchange Act Release Nos. 79400 (Nov. 25, 2016), 81 FR 86750 (Dec. 1, 2016); 79738 (Jan. 4, 2017), 82 FR 3068 (Jan. 10, 2017); and 80097 (Feb. 24, 2017), 82 FR 12251 (Mar. 1, 2017).

<sup>7</sup> NYSE Arca filed four proposals to implement Pillar in stages: (1) Adopting rules for trading sessions, order ranking and display, and order execution; (2) adopting rules for orders and modifiers and the retail liquidity program; (3) adopting rules for trading halts, short sales, limit up-limit down, and odd lots and mixed lots; and (4) adopting rules for auctions. See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR-NYSEArca-2015-38) (first Pillar filing and approval); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR-NYSEArca-2015-56) (second Pillar filing and approval); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (third Pillar filing and approval); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) and 76869 (Jan. 11, 2016), 81 FR 2276 (Jan. 15, 2016) (fourth Pillar filing and approval).

<sup>8</sup> The Exchange previously adopted these rules, generally with rule text reserved for future use, in anticipation of the current proposal. See Securities Exchange Act Release No. 79242 (Nov. 4, 2016), 81 FR 79081 (Nov. 10, 2016) (SR-NYSEMKT-2016-97). The rule numbers for the rules being adopted by NYSE MKT correspond with the rule numbers of NYSE Arca Equities rules.

platform, the Exchange would no longer trade on its current floor-based platform, and current Exchange equities rules governing the floor-based platform would no longer be applicable. The Exchange proposes to mark the affected Exchange rules with a preamble to state that these rules would no longer be in effect and represents that it will subsequently file a separate proposed rule change to delete rules no longer applicable.

A detailed description of the proposal appears in the Notice. The proposal is summarized and discussed below.

#### A. Exchange Rule 1E—Definitions

The Exchange proposes 12 new definitions to be used with the Pillar trading platform. The Exchange represents that most of the proposed definitions are based on the rules of NYSE Arca Equities. First, the Exchange proposes to define the term “Exchange Book” as the Exchange’s electronic file of orders.<sup>9</sup> Second, the Exchange proposes to define “Authorized Trader” as a person who may submit orders to the Exchange’s cash equity Trading Facilities on behalf of his or her ETP Holder.<sup>10</sup> Third, the Exchange proposes to define “Core Trading Hours” as the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time, or such other hours as may be determined by the Exchange from time to time.<sup>11</sup> Fourth, the Exchange proposes to define the term “Exchange” as NYSE MKT LLC.<sup>12</sup> Fifth, the Exchange proposes to define the term “ETP” as an Equity Trading Permit issued by the Exchange to a registered broker or dealer approved by the Exchange as a member organization.<sup>13</sup>

The Exchange proposes to define the term “ETP Holder” as a member organization that has been issued an ETP.<sup>14</sup> The Exchange proposes to define the term “General Authorized Trader” as an Authorized Trader who performs only non-market making activities on behalf an ETP Holder.<sup>15</sup> The Exchange proposes to define the term “Marketable” to mean, for a limit order, that the order that can be immediately executed or routed.<sup>16</sup>

<sup>9</sup> See Proposed Exchange Rule 1.1E (a) and NYSE Arca Equities Rule 1.1(a). The proposed rule does not contain the phrase “which contains all orders entered on the NYSE Arca Marketplace” from the NYSE Arca rule.

<sup>10</sup> See Proposed Exchange Rule 1.1E (g).

<sup>11</sup> See Proposed Exchange Rule 1.1E (j).

<sup>12</sup> See Proposed Exchange Rule 1.1E (k).

<sup>13</sup> See Proposed Exchange Rule 1.1E (m).

<sup>14</sup> See Proposed Exchange Rule 1.1E (n).

<sup>15</sup> See Proposed Exchange Rule 1.1E (p).

<sup>16</sup> See Proposed Exchange Rule 1.1E (u). The Exchange proposes that it will always consider a market order as Marketable.

The Exchange proposes to define the term “Official Closing Price” as the reference price to determine the closing price in a security.<sup>17</sup> The Exchange proposes to define the term “Security” to mean any security defined in Rule 3(a)(10) under the Act and, for purposes of proposed Rule 7E, to mean any NMS stock.<sup>18</sup> The Exchange proposes to define the term “Self-Regulatory Organization (“SRO”)” as defined in the provisions of the Act relating to national securities exchanges.<sup>19</sup> Finally, the Exchange proposes to define the term “Trading Facilities” as any and all electronic or automatic trading systems provided by the Exchange to ETP Holders.<sup>20</sup>

#### B. Exchange Rule 2E—Equity Trading Permits

The Exchange proposes to adopt rules related to equity trading permits on the Exchange, including procedures, qualifications, fees, and employees of ETP Holders. Exchange member organizations who want to trade on Pillar would need to obtain an ETP.<sup>21</sup>

The Exchange proposes that it may, under certain conditions, deny an ETP or condition trading privileges under an ETP.<sup>22</sup> The Exchange represents that these conditions are identical to NYSE Arca Equities Rule 2.4(a) and (b). Additionally, the Exchange proposes that traders of ETP Holders for which the Exchange is the Designated Examining Authority must successfully complete the Series 7 examination.<sup>23</sup> The Exchange represents that these requirements are identical to those in the NYSE Arca Equities rules.

Proposed Exchange Rule 2.6E would specify that the issuance of an ETP constitutes a revocable privilege and confers on its holder no right or interest of any nature to continue as an ETP Holder.<sup>24</sup> The Exchange represents that this rule is identical to NYSE Arca

<sup>17</sup> See Proposed Exchange Rule 1.1E (gg). The proposed rule provides detailed procedures for the determination of the official closing price.

According to the Exchange, proposed Rule 1.1E (gg), together with proposed Exchange Rule 7.35E, would obviate the need for current Exchange Rule 123C—Equities (The Closing Procedures), which is how the Exchange currently determines the Official Closing Price for an Exchange listed security.

<sup>18</sup> See Proposed Exchange Rule 1.1E (rr).

<sup>19</sup> See Proposed Exchange Rule 1.1E (ss).

<sup>20</sup> See Proposed Exchange Rule 1.1E (xx). The Exchange also proposes to amend a cross reference in Exchange Rule 1.1 (hhh).

<sup>21</sup> See Proposed Exchange Rule 2.2E. The Exchange is not adopting the rule text in NYSE Arca Equities Rule 2.2 relating to registered broker dealers, because the Exchange believes it is not necessary.

<sup>22</sup> See Proposed Exchange Rule 2.4E.

<sup>23</sup> See Proposed Exchange Rule 2.4E.

<sup>24</sup> See Proposed Exchange Rule 2.6E.

Equities Rule 2.6. Proposed Exchange Rule 2.17E would set forth “Activity Assessment Fees” for securities transactions effected on the Exchange, as required by Section 31 of the Act, and would specify that the Exchange may retain payment to help fund its regulatory expenses.<sup>25</sup> The Exchange represents that proposed Exchange Rule 2.17E is based on current Exchange Rule 440H—Equities.

Proposed Exchange Rule 2.21E would specify registration requirements for employees of ETP Holders, including examination requirements, continuing education requirements, and procedures for registering employees. The proposed rule would prohibit an ETP Holder from employing an Exchange employee during regular Exchange business hours.<sup>26</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 2.21.<sup>27</sup>

Proposed Exchange Rule 2.22E would set forth the Exchange back-up systems and mandatory testing requirements of the Exchange. The Exchange represents that the proposed rule is based on current Exchange Rule 49(b)—Equities.<sup>28</sup> Proposed Exchange Rule 2.24E would set forth the retention requirements for ETP books and records.<sup>29</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 2.24.<sup>30</sup>

### C. Exchange Rule 3E—Organization and Administration of the Exchange

The next section of proposed Exchange rules would govern the internal administration of the Exchange. Proposed Exchange Rule 3.6E would allow the Exchange to enter into agreements with domestic and foreign self-regulatory organizations to provide

for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement, and other regulatory purposes.<sup>31</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 3.6.<sup>32</sup> Proposed Exchange Rule 3.11E would set forth fingerprint-based background checks of Exchange employees and other personnel related to the Exchange.<sup>33</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 3.11 and current Exchange Rule 28—Equities.

### D. Exchange Rule 6E—Business Conduct

The next section of proposed Exchange rules would govern the business conduct of ETP Holders and their associated persons. Proposed Exchange Rule 6.3E would establish the Exchange’s requirement that every ETP Holder establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the ETP Holder or persons associated with the ETP Holder.<sup>34</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.3.

Proposed Exchange Rule 6.10E would specify an ETP Holder’s obligations with respect to trading on the Exchange when holding any options that are not issued by the Options Clearing Corporation.<sup>35</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.10.

Proposed Exchange Rule 6.12E would govern requirements for joint accounts between an ETP Holder and another person, including reporting obligations to the Exchange.<sup>36</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 6.12.

Proposed Exchange Rule 6.15E would prohibit ETP Holders from participating in a prearranged trade.<sup>37</sup> The Exchange

represents that the proposed rule is based on NYSE Arca Equities Rule 6.15(b).

### E. Exchange Rule 7E—Equities Trading

The proposed rules under Exchange Rule 7E would set forth how trading would be conducted on the Exchange. Section 1 of proposed Exchange Rule 7E would set forth general provisions relating to cash equities trading on the Pillar trading platform, such as hours of business, clearly erroneous executions, limit up-limit down plan, and clearance and settlement. Section 3 of proposed Exchange Rule 7E would set forth the trading rules for Pillar. Other proposed Exchange rules would provide that the Exchange would not offer a retail liquidity program, set forth rules related to the Exchange routing broker, and adopt rules to comply with the Tick Size Pilot Plan. The Exchange represents that the trading system and rules are based on the rules of NYSE Arca Equities.

#### 1. General Provisions

The general provisions of the proposed trading rules would set out the necessary rules for trading on the Exchange, including rules governing when the Exchange would be open for business, how clearly erroneous executions would be handled by the Exchange, how the Exchange would clear and settle securities transactions conducted on the Exchange, requirements for short sales, and the limit up-limit down plan.

Proposed Exchange Rule 7.1E would set forth the hours of operation for the Exchange.<sup>38</sup> The proposed rule also sets forth when the Exchange Chief Executive Officer may take specified actions, such as halting or suspending trading in some or all securities on the Exchange. The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.1 and current Exchange Rule 51—Equities.<sup>39</sup>

Proposed Exchange Rule 7.2E would set forth the holiday schedules for the Exchange.<sup>40</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.2 and current Exchange Rule 51.10—Equities.

Proposed Exchange Rule 7.3E would specify that ETP Holders may not charge fixed commissions and that they must indicate whether they are acting as a broker or as a principal.<sup>41</sup> The Exchange

<sup>38</sup> See Proposed Exchange Rule 7.1E.

<sup>39</sup> The Exchange proposes that current Exchange Rule 12—Equities and Rule 51—Equities would not be applicable for trading on Pillar. *See id.*

<sup>40</sup> See Proposed Exchange Rule 7.2E.

<sup>41</sup> See Proposed Exchange Rule 7.3E.

<sup>25</sup> See Proposed Exchange Rule 2.17E.

<sup>26</sup> See Proposed Exchange Rule 2.21E.

<sup>27</sup> The Exchange represents that proposed Exchange Rule 2.21E, together with proposed Exchange Rule 2.4E, would render the following current Exchange rules obsolete: Rule 345—Equities (Employees—Registration, Approval, Records); Rule 345A—Equities (Continuing Education for Registered Persons); and Rule 342—Equities (Compliance Supervisors) related to DMM Series 14A requirement. However, an Exchange member organization engaged in a public business in addition to a DMM business must have a qualified compliance supervisor that has passed the Series 14A examination, but would no longer need the Series 14A examination.

<sup>28</sup> See Proposed Exchange Rule 2.22E. The Exchange would designate current Exchange Rule 49—Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing) as not applicable to Pillar trading.

<sup>29</sup> See Proposed Exchange Rule 2.24E.

<sup>30</sup> The Exchange represents that proposed Exchange Rule 2.24E would set forth the same requirements as current Exchange Rule 440—Equities (Books and Records), therefore current Exchange Rule 440—Equities would not be applicable on Pillar.

<sup>31</sup> See Proposed Exchange Rule 3.6E.

<sup>32</sup> The Exchange proposes that current Rule 27—Equities would not be applicable on Pillar because proposed Exchange Rule 3.6E would cover the same matter. *See id.*

<sup>33</sup> See Proposed Exchange Rule 3.11E.

<sup>34</sup> See Proposed Exchange Rule 6.3E.

<sup>35</sup> See Proposed Exchange Rule 6.10E. The Exchange proposes that current Exchange Rule 96—Equities would not be applicable for trading on Pillar.

<sup>36</sup> See Proposed Exchange Rule 6.12E. The Exchange proposes that current Exchange Rule 93—Equities (Trading for Joint Account) and Rule 94—Equities (Designated Market Maker’s or Odd-Lot Dealers Interest in Joint Accounts) would not be applicable for trading on Pillar.

<sup>37</sup> See Proposed Exchange Rule 6.15E. The Exchange proposes that current Exchange Rule 78—Equities would not be applicable on Pillar. *See Notice*, 82 FR at 10819.

represents that the proposed rule is based on NYSE Arca Equities Rule 7.3.<sup>42</sup>

Proposed Exchange Rule 7.4E would set the ex-dividend or ex-right dates for stocks traded “regular” way.<sup>43</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.4.<sup>44</sup>

Proposed Exchange Rule 7.7E would establish that all bids and offers on the Exchange would be anonymous unless otherwise specified by the ETP Holder.<sup>45</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.7.

Proposed Exchange Rule 7.8E would specify that all bids and offers will be considered “regular way,” and the Exchange would not accept orders that are not entered for regular way settlement.<sup>46</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.8E.<sup>47</sup>

Proposed Exchange Rule 7.9E would state that the execution price of an order is binding, notwithstanding the Exchange’s clearly erroneous executions and limit up-limit down rules.<sup>48</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.9.<sup>49</sup>

Proposed Exchange Rule 7.10E would set forth the Exchange’s rules governing clearly erroneous executions.<sup>50</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.10.<sup>51</sup>

Proposed Exchange Rule 7.11E would specify how the Exchange would comply with the Regulation NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”).<sup>52</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.11(a), (b)(2), and (b)(5).<sup>53</sup>

<sup>42</sup> The Exchange proposes that current Exchange Rule 388—Equities (Prohibition Against Fixed Rates of Commission) would not be applicable for trading on Pillar.

<sup>43</sup> See Proposed Exchange Rule 7.4E.

<sup>44</sup> The Exchange proposes that current Exchange Rule 235—Equities would not be applicable for trading on Pillar.

<sup>45</sup> See Proposed Exchange Rule 7.7E.

<sup>46</sup> See Proposed Exchange Rule 7.8E.

<sup>47</sup> The Exchange proposes that current Exchange Rules 71—Equities, 14—Equities, and 73—Equities would not be applicable for trading on Pillar.

<sup>48</sup> See Proposed Exchange Rule 7.9E.

<sup>49</sup> The Exchange proposes that current Exchange Rules 71—Equities (Precedence of Highest Bid and Lowest Offer) and 411—Equities (Erroneous Reports) would not be applicable for trading on Pillar.

<sup>50</sup> See Proposed Exchange Rule 7.10E.

<sup>51</sup> The Exchange proposes that current Exchange Rule 128—Equities (Clearly Erroneous Executions) would not be applicable for trading on Pillar.

<sup>52</sup> See Proposed Exchange Rule 7.11E.

<sup>53</sup> The Exchange proposes that current Exchange Rule 80C—Equities would not be applicable for trading on Pillar.

The Exchange proposes to amend paragraph (c)(i) of Exchange Rule 7.12E to change the rule cross reference from Rule 123D—Equities to Rule 7.35(e).<sup>54</sup>

Proposed Exchange Rule 7.13E would govern trading suspensions.<sup>55</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.13.

Proposed Exchange Rule 7.14E would govern clearance and settlement procedures.<sup>56</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.14.<sup>57</sup>

Proposed Exchange Rule 7.15E would state that Market Makers may not have an interest in an option that is not issued by the Options Clearing Corporation and prohibit pool dealing in registered securities.<sup>58</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.15.<sup>59</sup>

Proposed Exchange Rule 7.16E would set forth the short sales rule.<sup>60</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.16.<sup>61</sup>

Proposed Exchange Rule 7.17E would establish requirements that all orders and quotes comply with Rule 602 of Regulation NMS (firm quote rule).<sup>62</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.17.<sup>63</sup>

## 2. Trading Rules for Pillar

The trading rules for Pillar would set forth definition of orders, how auctions would operate, how orders are displayed and ranked, and how orders are executed. The Exchange represents that the proposed trading rules are based on NYSE Arca Equities rules, with the exception of rules governing orders and modifiers and rules governing trading sessions.

Proposed Exchange Rule 7.29E would specify that, to obtain authorized access

<sup>54</sup> See Proposed Exchange Rule 7.12E. The Exchange proposes Rule 7.35E to govern auctions. Accordingly, the Exchange proposes that the procedures set out in current Exchange Rule 123D—Equities would not be applicable on the Pillar trading platform.

<sup>55</sup> See Proposed Exchange Rule 7.13E.

<sup>56</sup> See Proposed Exchange Rule 7.14E.

<sup>57</sup> The Exchange proposes that current Exchange Rules 130—Equities and 132—Equities would not be applicable for trading on Pillar.

<sup>58</sup> See Proposed Exchange Rule 7.15E.

<sup>59</sup> The Exchange proposes that current Exchange Rule 105—Equities would not be applicable for trading on Pillar.

<sup>60</sup> See Proposed Exchange Rule 7.16E.

<sup>61</sup> The Exchange proposes that current Exchange Rule 440B—Equities (Short Sales) would not be applicable for trading on Pillar.

<sup>62</sup> See Proposed Exchange Rule 7.17E.

<sup>63</sup> The Exchange proposes that current Exchange Rule 60—Equities (Dissemination of Quotations) would not be applicable for trading on Pillar.

to the Exchange, each ETP Holder would be required to enter into a User Agreement.<sup>64</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.29(a).

Proposed Exchange Rule 7.30E would establish requirements for ETP Holders relating to authorized traders who can obtain access to the Exchange on behalf of an ETP Holder.<sup>65</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.30.

Proposed Exchange Rule 7.31E would set forth the primary order types, time in force modifiers for the order types, orders with conditional or undisplayed price and/or size, non-routable and routable order instructions, operations of pegged orders, and other order types that would be available on the Pillar trading platform.<sup>66</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.31 with the following differences: (1) The self-trade prevention (“STP”) modifiers would not include references relating to ETPIDs;<sup>67</sup> (2) Arca Only Orders would be renamed “MKT Only Orders” on the Exchange;<sup>68</sup> (3) ETP Holders would be permitted to specify that Primary Only Day/IOC Orders in NYSE Arca-listed securities may include an instruction to be routed to NYSE Arca as a routable order, as set forth in proposed Rule 7.31E(f)(1)(B);<sup>69</sup> and (4) NYSE Arca Equities Rule 7.31.02 would not be adopted.<sup>70</sup>

Proposed Exchange rule 7.32E would set forth the maximum order entry size at 5 million shares.<sup>71</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.32.<sup>72</sup>

Proposed Exchange Rule 7.33E would require ETP Holders to include, with each order entered into the Exchange, their capacity code information, whether as principal, agent, or riskless principal.<sup>73</sup> The Exchange represents

<sup>64</sup> See Proposed Exchange Rule 7.29E.

<sup>65</sup> See Proposed Exchange Rule 7.30E.

<sup>66</sup> See Proposed Exchange Rule 7.31E.

<sup>67</sup> See Proposed Exchange Rule 7.31E(i)(2).

Because the Exchange would be operating on Pillar phase II protocols only, STPs would be based on the MPID of an ETP Holder and not on an ETP ID. Consequently, proposed Exchange Rule 7.32E(i)(2) would not include references from NYSE Arca Equities Rule 7.31(i)(2) relating to ETPIDs (ETP identifications).

<sup>68</sup> See Proposed Exchange Rule 7.31E(e)(1).

<sup>69</sup> See Proposed Exchange Rule 7.31E(f)(1)(B).

<sup>70</sup> The Exchange proposes that current Exchange Rules 13—Equities (Orders and Modifiers) and 1000(c)—Equities would not be applicable to trading on Pillar.

<sup>71</sup> See Proposed Exchange Rule 7.32E.

<sup>72</sup> The Exchange proposes that the current maximum order size references before subparagraph (a) in Exchange Rule 1000—Equities would not be applicable to trading on Pillar.

<sup>73</sup> See Proposed Exchange Rule 7.33E.

that the proposed rule is based on NYSE Arca Equities Rule 7.33.

Proposed Exchange Rule 7.34E would specify that the Exchange would operate three trading sessions each day: Early, Core, and Late.<sup>74</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.34, except that the early trading session would start at 7:00 a.m. Eastern Time rather than 4:00 a.m. Eastern Time for NYSE Arca Equities.<sup>75</sup>

Proposed Exchange Rule 7.35E would set forth the auction rules.<sup>76</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.35, with some substantive differences.<sup>77</sup> First, the Exchange states that, because it lists the securities of operating companies, instead of the exchange traded products listed on NYSE Arca, the auction-collar thresholds should be wider than those on NYSE Arca, and the Exchange proposes auction collars based on the collars for the Nasdaq opening and closing crosses. Second, the Exchange, based on the rules of Nasdaq, proposes to provide that the Closing Auction Imbalance Freeze would begin ten minutes (instead of one minute) before the scheduled time for the closing auction.

Proposed Exchange Rule 7.36E would set forth how orders are ranked and displayed, and the priority of orders.<sup>78</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.36.

Proposed Exchange Rule 7.37E would set forth how orders would execute and route, the data feeds the Exchange would use, the prohibition on quotations that lock or cross the best protected bid or offer, and exceptions to the Commission's Order Protection Rule.<sup>79</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities 7.37, except that the Exchange would not be using data feeds from broker-dealers or routing to away markets that do not display protected quotations.<sup>80</sup>

<sup>74</sup> See Proposed Exchange Rule 7.34E. The Exchange proposes that NYSE Arca Equities Rule 7.34(b)(2) and (b)(3) would not be adopted.

<sup>75</sup> See, e.g., Proposed Exchange Rule 7.34E.

<sup>76</sup> See Proposed Exchange Rule 7.35E.

<sup>77</sup> The Exchange proposes that current Exchange Rules 15—Equities, 115A—Equities, 116.40—Equities, 123C—Equities, and 123D—Equities would not be applicable on Pillar.

<sup>78</sup> See Proposed Exchange Rule 7.36E.

<sup>79</sup> See Proposed Exchange Rule 7.37E.

<sup>80</sup> The Exchange proposes that the following rules would not be applicable to trading on the Pillar trading platform: Exchange Rules 15A—Equities (Order Protection Rule), 19—Equities (Locking or Crossing Protected Quotations in NMS Stocks), 60—Equities (Dissemination of Quotations), 61—

Proposed Exchange Rule 7.38E sets forth how odd-lot and mixed-lot orders are treated on the Exchange.<sup>81</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.38.

Proposed Exchange Rule 7.39E sets forth how trading would occur on the Exchange through its off-hours trading facility.<sup>82</sup> The Exchange proposes to permit only aggregate-price coupled orders—an order to buy or sell a group of securities (no fewer than 15) having a total market value of \$1 million or more—through the off-hours trading facility. The Exchange represents that NYSE Arca Equities Rule 7.39 would not be adopted, but rather, current Exchange Rule 900 series would form the basis for the proposed rules.<sup>83</sup>

Proposed Exchange Rule 7.40E would set forth the Exchange's obligation to report trades to an appropriate consolidated transaction reporting system.<sup>84</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.40.<sup>85</sup>

Proposed Exchange Rule 7.41E would specify that each executed transaction on the Exchange will be automatically processed for clearance and settlement on a locked-in and anonymous basis.<sup>86</sup> With the exception of proposed Exchange Rule 7.41E(c), the Exchange represents that the proposed rule is based on NYSE Arca Equities 7.41. The Exchange represents that proposed Exchange Rule 7.41E(c) is based on NYSE Rule 130(b), which specifies the circumstances under which the Exchange may reveal the contra-party identity.<sup>87</sup>

Equities (Recognized Quotations), 72—Equities (Priority of Bids and Offers and Allocation of Executions), 79A.15—Equities, 100(a) and (b)—Equities (Automatic Executions), 1001—Equities (Execution of Automatically Executing Orders), 1002—Equities (Availability of Automatic Execution Feature), and 1004—Equities (Election of Buy Minus and Sell Plus).

<sup>81</sup> See Proposed Exchange Rule 7.38E.

<sup>82</sup> See Proposed Exchange Rule 7.39E.

<sup>83</sup> NYSE Arca Equities Rule 7.39 addresses the adjustment of open orders. Because the Exchange does not propose to have any open orders when trading on the Pillar trading platform, the Exchange would not adopt rule text based on NYSE Arca Equities Rule 7.39.

<sup>84</sup> See Proposed Exchange rule 7.40E.

<sup>85</sup> The Exchange proposes that current Exchange Rule 128A—Equities would not be applicable on Pillar.

<sup>86</sup> See Proposed Exchange rule 7.41E.

<sup>87</sup> The Exchange represents that proposed Exchange Rule 7.41E.10 is based on current Exchange Rule 132.10—Equities. The Exchange proposes that current Exchange Rules 130—Equities (Overnight Comparison of Exchange Transaction), 132—Equities (Comparison and Settlement of Transactions Through a Fully-Interfaced or Qualified Clearing Agency), 133—Equities (Comparison—Non-cleared Transactions), 134—Equities (Differences and Omissions—Non-cleared

3. Retail Liquidity Program Would Not Be Available

The Exchange currently operates a retail liquidity program on a pilot basis.<sup>88</sup> The Exchange proposes that it would not establish a retail liquidity program on Pillar.

4. Rules Related to Exchange Routing Broker

Proposed Exchange Rule 7.45E would establish the rules for the Exchange's routing broker.<sup>89</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.45.<sup>90</sup>

5. Rules Related to Tick Size Pilot Plan

Proposed Exchange Rule 7.46E sets forth the rules for the Tick Size Pilot Plan.<sup>91</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 7.46, with the exception of references to the retail liquidity program.<sup>92</sup>

#### F. Exchange Rule 12E—Arbitration

Proposed Exchange Rule 12E would provide that disputes between or among ETP Holders and their associated persons would be resolved via arbitration.<sup>93</sup> The Exchange represents that the proposed rule is based on current Exchange Rule 600—Equities.

#### G. Exchange Rule 13E—Liability of Directors and the Exchange

Proposed Exchange Rule 13.2E would set forth requirements governing liability of the Exchange, including the limits on liability under specified circumstances.<sup>94</sup> The Exchange represents that the proposed rule is based on current Exchange Rule 905NY and NYSE Arca Equities Rule 13.2. Proposed Exchange Rule 13.3E would set forth when ETP Holders and their associated persons may sue Exchange

Transactions (“DKs”), and 136—Equities (Comparison—Transactions Excluded from a Clearance) would not apply to trading on Pillar. See Notice, 82 FR at 10821.

<sup>88</sup> See Securities Exchange Act Release Nos. 67347 (Jul. 3, 2012), 77 FR 40673 (Jul. 10 2012) (approving the retail liquidity program on a pilot basis); 79587 (Dec. 16, 2016), 81 FR 93975 (Dec. 22, 2016) (extending the pilot until June 30, 2017) (SR—NYSE—2011—55; SR—NYSEAmex—2011—84).

<sup>89</sup> See Proposed Exchange Rule 7.45E.

<sup>90</sup> The Exchange proposes that current Exchange Rule 17—Equities (Use of Exchange Facilities and Vendor Services) would not be applicable on Pillar.

<sup>91</sup> See Proposed Exchange Rule 7.46E.

<sup>92</sup> The Exchange proposes that current Exchange Rule 67—Equities (Tick Size Pilot Plan) would not be applicable on Pillar.

<sup>93</sup> See Proposed Exchange Rule 12E.

<sup>94</sup> See Proposed Exchange Rule 13.2E. The Exchange proposes that current Exchange Rule 18—Equities would not be applicable on Pillar. See Notice, 82 FR at 10822.

subsidiaries and personnel.<sup>95</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 13.3. Proposed Exchange Rule 13.4E would determine the responsible party for legal costs when the Exchange is defending a legal proceeding.<sup>96</sup> The Exchange represents that the proposed rule is based on NYSE Arca Equities Rule 13.4.

#### *H. Current Exchange Rules Not Applicable on Pillar*

As noted earlier, the Exchange would no longer operate a trading floor once the Exchange transitions to Pillar. As a result, the Exchange proposes that certain current rules that relate to floor-based trading would not be applicable on Pillar.<sup>97</sup>

### III. Discussion and Findings

After careful review of the proposal, the Commission finds, for the reasons discussed below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.<sup>98</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>99</sup> which requires, among other things, that the rules of a national securities exchange be 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market systems and, in general, to protect investors and the public interest and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### *A. Pillar Trading System*

The proposal would replace the Exchange's current floor based trading, which has a parity-allocation model, with a fully automated, electronic trading system with a price-time-priority model. The Commission notes

that the proposed rules closely parallel, and are substantially similar to, current NYSE Arca Equities rules and current Exchange rules, which were filed and approved by the Commission (or which became immediately effective) pursuant to Section 19(b) of the Act. NYSE Arca Equities currently operates using the Pillar trading platform, and most other national securities exchanges operate fully electronic markets that use a price-time-priority model. Accordingly, the Commission believes that the proposal raises no novel regulatory issues, that it is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act.

#### *B. Section 11(a) of the Act*

Section 11(a)(1) of the Act<sup>100</sup> prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, "covered accounts") unless an exception applies. Rule 11a2-2(T) under the Act,<sup>101</sup> known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once the order has been transmitted to the member performing the execution;<sup>102</sup> (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor an associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. For the reasons set forth below, the Commission believes that ETP Holders entering orders into the Exchange's Pillar trading system would satisfy the requirements of Rule 11a2-2(T).<sup>103</sup>

Rule 11a2-2(T)'s first requirement is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that it will not have a physical trading floor once it transitions to the Pillar trading platform, and the Exchange's Pillar trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.<sup>104</sup> In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.<sup>105</sup> Because the Pillar trading system receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the Pillar

platform and does not apply to trading in the Exchange's off-hours trading facility, which is to be governed by proposed Rule 7.39E ("Off-Hours Trading Facility"). See Email from Clare Saperstein, Associate General Counsel, NYSE Group, Inc. to Yue Ding, Jennifer Dodd, and Steve Kuan, Division of Trading and Markets, Commission (May 2, 2017). The Exchange has also clarified that its Off-Hours Trading Facility would continue to operate on its existing technology and would not operate on the proposed Pillar trading platform. See *id.* Additionally, the Exchange represents that it is not proposing any new or different functionality for its Off-Hours Trading Facility and that member organizations using the Off-Hours Trading Facility pursuant to proposed Rule 7.39E would continue to be required to comply with Section 11(a)(1) of the Act, and any applicable exceptions thereto as are currently applicable to the Exchange's off-hours trading facility under the Exchange's Rule 900 Series, which is based on the rules of the New York Stock Exchange LLC ("NYSE"). See *id.*; see also Securities Exchange Act Release Nos. 33992 (May 2, 1994), 59 FR 23907 (May 9, 1994) (SR-NYSE-93-50) (approving the NYSE's off-hours trading facility on a permanent basis); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving the NYSE's off-hours trading facility on a temporary basis); and 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63) (approving the adoption of new equity trading rules by the Exchange that are substantially identical to the equity trading rules of NYSE).

<sup>104</sup> See Notice, *supra* note 3, 82 FR at 10825.

<sup>105</sup> In the context of other all-electronic systems, the Commission has similarly found that the off-floor transmission requirement is met if the system receives orders electronically through remote terminals or computer-to-computer interfaces. See, e.g., Securities Exchange Act Release Nos. 61419 (Jan. 26, 2010), 75 FR 5157 (Feb. 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10-131) (granting the application of The Nasdaq Stock Market LLC for registration as a national securities exchange); and 44983 (Oct. 25, 2001), 66 FR 55225 (Nov. 1, 2001) (SR-PCX-00-25) (approving the establishment of the Archipelago Exchange as the equities trading facility of PCX Equities, Inc., a subsidiary of the Pacific Exchange, Inc.).

<sup>95</sup> See Proposed Exchange Rule 13.3E.

<sup>96</sup> See Proposed Exchange Rule 13.4E. The Exchange proposes that current Exchange Rule 25—Equities (Exchange Liability for Legal Costs) would not be applicable on Pillar. See Notice, 82 FR at 10822.

<sup>97</sup> See Notice, 82 FR at 10823–10824, for a list of current Exchange rules related to floor-based trading that would not be applicable on Pillar.

<sup>98</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>99</sup> 15 U.S.C. 78f(b)(5).

<sup>100</sup> 15 U.S.C. 78k(a)(1).

<sup>101</sup> 17 CFR 240.11a2-2(T).

<sup>102</sup> This prohibition also applies to associated persons of the initiating member. The member may, however, participate in clearing and settling the transaction.

<sup>103</sup> The Exchange has clarified that its analysis relating to Section 11(a) of the Act in the Notice applies to the Exchange's proposed Pillar trading

trading system would satisfy this off-floor transmission requirement.

Second, Rule 11a2-2(T) requires that neither the initiating member nor an associated person of the initiating member participate in the execution of the transaction at any time after the order for the transaction has been transmitted. The Exchange represents that the Pillar trading system would at no time following the submission of an order allow an ETP Holder or an associated person of the ETP Holder to acquire control or influence over the result or timing of the order's execution.<sup>106</sup> According to the Exchange, the execution of an ETP Holder's order would be determined solely by the quotes and orders that are present in the system at the time the member submits the order and by the order priority under the Exchange rules.<sup>107</sup> Accordingly, the Commission believes that an Exchange member and its associated persons would not participate in the execution of an order submitted to the Pillar trading system.

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member that is not associated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.<sup>108</sup>

<sup>106</sup> See Notice, *supra* note 3, 82 FR at 10825.

<sup>107</sup> See *id.* The Exchange notes that Rule 11a2-2(T) does not preclude a member from cancelling or modifying orders, or from modifying the instructions for executing orders, after they have been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. See *id.* The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as the modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

<sup>108</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979).

The Exchange represents that the design of the Pillar trading system ensures that no ETP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.<sup>109</sup> Based on the Exchange's representation, the Commission believes that the Pillar trading system would satisfy this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>110</sup> ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.<sup>111</sup>

#### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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

<sup>109</sup> See Notice, *supra* note 3, 82 FR at 10825.

<sup>110</sup> In addition, Rule 11a2-2(T)(d) requires that, if a member or associated person is authorized by written contract to retain compensation in connection with effecting transactions for covered accounts over which the member or associated person thereof exercises investment discretion, the member or associated person must furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 107 ("The contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

<sup>111</sup> The Exchange has represented that it will advise its membership through the issuance of a Regulatory Bulletin that those ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the exemption in Rule 11a2-2(T). See Notice, *supra* note 3, 82 FR at 10825.

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-01 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-NYSEMKT-2017-01. 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-NYSEMKT-2017-01 and should be submitted on or before May 31, 2017.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

As noted above, in Amendment No. 1, the Exchange proposes to: (1) Amend proposed Exchange Rule 7.35E(a)(10)(A) to specify the "Auction Collar" as the greater of \$0.50 or 10% away from the Auction Reference Price and delete the specified percentages to conform to SR-NYSEArca-2016-130; (2) amend proposed Exchange Rule 7.35E(d)(2) to note that the Closing Auction Imbalance Freeze will begin ten minutes (rather than one minute) before the scheduled time for the Closing Auction; (3) amend proposed Exchange Rule 7.35E(f)(2) to reject certain orders until after the Auction Processing Period for the IPO Auction has concluded; (4) amend

proposed Exchange Rule 7.35E(h)(3)(A) and (B) to define “previously-live orders” for Core Open Auction, Trading Halt Auction, Closing Auction, and IPO Auction and to define how unexecuted orders would be processed when the Exchange transitions from continuous trading from a prior trading session; (5) amend proposed Exchange rule 7.31E(h)(3)(A) to specify that Discretionary Pegged Orders do not participate in any auctions; (6) amend proposed Exchange Rule 7.34E(c)(1)(A) to add a provision that Discretionary Pegged Orders may not be entered before or during the Early Trading Session; (7) amend proposed Exchange Rule 7.46E to reflect recent changes to publication dates with respect to the Tick Size Pilot Plan; and (8) state that the Pillar transition is anticipated to occur in the third quarter of 2017.

The Commission believes that Amendment No. 1 does not raise novel regulatory issues and is based on, and substantively identical to, the existing rules of other self-regulatory organizations. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>112</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, that pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as modified by Amendment No. 1, (SR-NYSEMKT-2017-01), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,<sup>113</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-09419 Filed 5-9-17; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80605; File Nos. SR-DTC-2017-802; SR-NSCC-2017-802]

### Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Notice of Filing of and No Objection To Advance Notices, as Modified by Amendments No. 1, To Renew the Credit Facility

May 5, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street

Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> notice is hereby given that on April 4, 2017 The Depository Trust Company (“DTC”) and National Securities Clearing Corporation (“NSCC,” together with DTC, “Clearing Agencies”) filed with the Securities and Exchange Commission (“Commission”) the advance notices SR-DTC-2017-802 and SR-NSCC-2017-802. On May 1, 2017, the Clearing Agencies filed Amendments No. 1 to the advance notices.<sup>3</sup> The advance notices, as modified by Amendments No. 1 (hereinafter, collectively “Advance Notices”), are described in Items I, II and III below, which Items have been prepared primarily by the Clearing Agencies. The Commission is publishing this notice to solicit comments on the Advance Notices from interested persons and providing notice that the Commission does not object to the Advance Notices.

#### I. Clearing Agencies’ Statement of the Terms of Substance of the Advance Notices

These Advance Notices are filed by the Clearing Agencies in connection with their proposals to (1) renew (“Renewal”) their 364-day committed revolving credit facility (“Credit Facility”), described below, and (2) make annual renewals of the Credit Facility on substantially similar terms and conditions (“Future Renewals”), also described below, as described in greater detail below.<sup>4</sup>

#### II. Clearing Agencies’ Statement of the Purpose of, and Statutory Basis for, the Advance Notices

In their filings with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the Advance Notices and discussed any comments they received on the Advance Notices. The text of

these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

#### (A) Clearing Agencies’ Statement on Comments on the Advance Notices Received From Members, Participants, or Others

The Clearing Agencies have not solicited or received any written comments relating to these proposals. The Clearing Agencies will notify the Commission of any written comments received by the Clearing Agencies.

#### (B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

##### Description of the Proposals

*Renewal.* As part of their liquidity risk management regime, the Clearing Agencies maintain a 364-day committed revolving line of credit with a syndicate of commercial lenders, which is renewed every year. The terms and conditions of the current Renewal would be specified in the Sixteenth Amended and Restated Revolving Credit Agreement, to be dated as of May 9, 2017 (“Renewal Agreement”), among the Clearing Agencies,<sup>5</sup> the lenders party thereto, the administrative agent and the collateral agent. Such terms and conditions are substantially the same as the terms and conditions of the existing credit agreement, dated as of May 10, 2016, as heretofore amended (“Existing Agreement”),<sup>6</sup> except that pricing<sup>7</sup> and the amount of the aggregate commitment for NSCC may change. The substantive terms of the Renewal Agreement are set forth in the Summary of Indicative Principal Terms and Conditions, dated March 30, 2017, which is not a public document. The aggregate commitments being sought under the Renewal would be for an amount up to \$14 billion for NSCC and DTC together, of which all but \$1.9 billion commitment would be the

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> In Amendments No. 1 to the advance notices, the Clearing Agencies request Commission approval to (i) accept \$14.075 billion in aggregate commitments for this year’s facility, and (ii) clarify that for future renewals of the credit facility, the Clearing Agencies may accept, not just seek, an aggregate commitment amount within 15 percent of \$14 billion, as discussed below.

<sup>4</sup> Terms not defined herein are defined in the Terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC, available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf); or Rules and Procedures of NSCC (“Rules”), available at [http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf).

<sup>5</sup> The Renewal Agreement would provide for both DTC and NSCC as borrowers, with an aggregate commitment of \$1.9 billion for DTC and the amount of any excess aggregate commitment for NSCC. The borrowers are not jointly and severally liable and each lender has a ratable commitment to each borrower. DTC and NSCC provide separate collateral to secure their respective borrowings.

<sup>6</sup> See Securities Exchange Act Release No. 77750 (April 29, 2016), 81 FR 27181 (May 5, 2016) (SR-DTC-2017-801; SR-NSCC-2016-801).

<sup>7</sup> “Pricing” of the Credit Facility refers to the charges and fees owed by the borrowers to the agents and lenders thereto with respect to the services performed by the agents, the commitment to lend and the rate of interest applicable to any borrowing under the Credit Facility, among other such matters.

<sup>112</sup> 15 U.S.C. 78s(b)(2).

<sup>113</sup> 17 CFR 200.30-3(a)(12).