

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72523; File No. SR–NYSEArca–2014–37]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of the Shares of iShares 2020 S&P AMT-Free Municipal Series Under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02

July 2, 2014.

#### I. Introduction

On May 2, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), 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 change to list and trade shares (“Shares”) of the iShares 2020 S&P AMT-Free Municipal Series (“Fund”). On May 14, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. <sup>3</sup> The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on May 21, 2014. <sup>4</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (“Units”) based on fixed income securities indexes. The Fund is a series of the iShares Trust (“Trust”). <sup>5</sup>

Blackrock Fund Advisors (“BFA”) is the investment adviser for the Fund. <sup>6</sup>

According to the Exchange, the Fund will seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the S&P AMT-Free Municipal Series 2020 Index™ (“Index”). <sup>7</sup> The Fund will not seek to return any pre-determined amount at maturity.

According to the Exchange, the Index measures the performance of investment-grade U.S. municipal bonds maturing in 2020. As of February 28, 2014, there were 1,427 issues in the Index. The Index includes municipal bonds primarily from issuers that are state or local governments or agencies such that the interest on the bonds is exempt from U.S. federal income taxes and the federal alternative minimum tax (“AMT”). Each bond must have a rating of at least BBB– by S&P, Baa3 by Moody’s Investors Service, Inc. (“Moody’s”), or BBB– by Fitch, Inc. and must have a minimum maturity par amount of \$2 million to be eligible for

the Securities Act of 1933 and the Investment Company Act of 1940 (“1940 Act”), dated December 16, 2013 (File Nos. 333–92935 and 811–09729) (“Registration Statement”). According to the Exchange, the Trust has obtained certain exemptive relief from the Commission under the 1940 Act. See Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812–13208).

<sup>6</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, BFA and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act, which requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of their relationship with their clients as well as compliance with other applicable securities laws. Accordingly, investment advisers must have procedures designed to prevent the communication and misuse of non-public information, consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>7</sup> The Exchange represents that the Index is sponsored by Standard & Poor’s Financial Services LLC (“S&P” or “Index Provider”), which is independent of the Fund and BFA. The Index Provider determines the composition and relative weightings of the securities in the Index and publishes information regarding the market value of the Index. The Index Provider is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

inclusion in the Index. To remain in the Index, bonds must maintain a minimum par amount greater than or equal to \$2 million as of each rebalancing date. All bonds in the Index will mature between June 1 and August 31 of 2020. When a bond matures in the Index, an amount representing its value at maturity will be included in the Index throughout the remaining life of the Index, and any such amount will be assumed to earn a rate equal to the performance of the S&P’s Weekly High Grade Index, which consists of Moody’s Investment Grade–1 municipal tax-exempt notes that are not subject to federal AMT. The Exchange states that, by August 31, 2020, the Index is expected to consist entirely of cash carried in this manner. The Index is a market value weighted index and is rebalanced after the close on the last business day of each month.

The Exchange represents that the Index for the Fund does not meet all of the “generic” listing requirements of Commentary .02(a) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based on fixed income securities indexes. Specifically, the Index does not meet the requirement set forth in Commentary .02(a)(2), which provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each must have a minimum original principal amount outstanding of \$100 million or more. Contrary to this requirement, as of February 28, 2014, only 6.25% of the weight of the Index components has a minimum original principal amount outstanding of \$100 million or more.

The Exchange represents that the Fund generally will invest at least 80% of its assets in the securities of the Index, except during the last months of the Fund’s operations. The Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with BFA), as well as in municipal bonds not included in the Index, but which BFA believes will help the Fund track the Index. For example, the Fund may invest in municipal bonds not included in the Index in order to reflect prospective changes in the Index (such as Index reconstitutions, additions, and deletions). The Fund will generally hold municipal bond securities issued by state and local municipalities whose interest payments are exempt from U.S. federal income tax, the federal AMT and, effective beginning in 2013, a federal Medicare contribution tax of 3.8% on “net investment income,” including dividends, interest, and capital gains. In addition, the Fund may invest any cash assets in one or more affiliated municipal money market

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> In Amendment No. 1, the Exchange: (a) Clarified that the net asset value (“NAV”) of the Fund normally will be determined once each business day as of the regularly scheduled close of business of the New York Stock Exchange (“NYSE”) (normally, 4:00 p.m. Eastern time) on each day the NYSE is open for trading; (b) provided additional information describing the NAV calculation pertaining to money market funds; (c) clarified that a common identifier such as CUSIP or ISIN (if applicable) will be included in the Disclosed Portfolio (as defined herein); and (d) made certain technical edits correcting typographical and other similar types of clerical errors.

<sup>4</sup> See Securities Exchange Act Release No. 72172 (May 15, 2014), 79 FR 29241 (“Notice”).

<sup>5</sup> See Post-Effective Amendment No. 1004 to the Trust’s registration statement on Form N–1A under

funds. In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including without limitation AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper. These cash equivalents may not be included in the Index. According to the Exchange, on or about August 31, 2020, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.<sup>8</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the applicable requirements of NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>12</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation

and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. The current value of the Index will be widely disseminated by one or more major market data vendors<sup>13</sup> at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii). In addition, an Intraday Indicative Value ("IIV") for the Shares of the Fund will be disseminated by one or more major market data vendors and updated at least every 15 seconds during the Core Trading Session (9:30 a.m. to 4:00 p.m. Eastern Time).<sup>14</sup> Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation information for investment company securities (excluding exchange-traded funds) may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding municipal bonds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper is available from third party pricing services and major market data vendors. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>15</sup> The Web site for the Fund also will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. The NAV of the Fund

normally will be determined once each business day as of the regularly scheduled close of business of the NYSE (normally, 4:00 p.m. Eastern time) on each day the NYSE is open for trading.<sup>16</sup>

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that the Index Provider is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.<sup>17</sup> Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. With respect to trading halts, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange represents that, if the IIV or the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or Index value occurs. If the interruption to the dissemination of the IIV or Index value persists past the trading day in which it occurred, the Exchange will halt trading. Moreover, trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Further, trading in the

<sup>13</sup> The Exchange further states that the components of the Index and their percentage weighting will be available from major market data vendors.

<sup>14</sup> See NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c). According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds. See Notice, *supra* note 4, at n.13.

<sup>15</sup> On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, a common identifier such as CUSIP or ISIN (if applicable), number of shares (if applicable), dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

<sup>8</sup> See Notice and Registration Statement, *supra* notes 4 and 5, respectively.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 17 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>16</sup> For purposes of calculating NAV of the Shares, the Fund will value fixed income portfolio securities, including municipal bonds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds, and municipal commercial paper using prices provided directly from independent third-party pricing services, which may use matrix pricing and valuation models to derive values or from one or more broker-dealers or market makers. Certain short-term debt securities may be valued on the basis of amortized cost. Shares of municipal money market funds will be valued at NAV.

<sup>17</sup> See *supra* note 7 and accompanying text.

Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth additional circumstances under which Shares of the Funds may be halted. The Exchange states that it has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Based on the Exchange's representations, the Commission believes that the Index is sufficiently broad-based and liquid to deter potential manipulation. As of February 28, 2014, there were 1,427 issues in the Index. As of the same date, 76.77% of the weight of the Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more for all maturities of the offering.<sup>18</sup> In addition, the total dollar amount outstanding of issues in the Index was approximately \$12.06 billion, and the average dollar amount outstanding of issues in the Index was approximately \$8.46 million. Further, the most heavily weighted component represents 1.21% of the weight of the Index, and the five most heavily weighted components represent 5.39% of the weight of the Index.<sup>19</sup> In addition, the average daily notional trading volume for Index components for the period December 31, 2012, to December 31, 2013, was \$49 million, and the sum of the notional trading volumes for the same period was approximately \$12.4 billion. As of March 17, 2014, 61.14% of the Index weight consisted of issues with a rating of AA/Aa2 or higher. The Commission notes that the Fund shares

similar characteristics of other exchange-traded funds, the shares of which are currently listed and trading on the Exchange.<sup>20</sup>

In support of this proposal, the Exchange has made representations, including:

(1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Funds currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).

(2) The continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares.

(3) The Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information, such as the value of the Index and IIV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to Equity Trading Permit Holders (each as described in more detail in the Notice and Registration Statement, as applicable), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

(4) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>21</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(5) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the

Shares from such markets or entities. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine. The Exchange also may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(6) For initial and continued listing of the Shares, the Trust is required to comply with Rule 10A-3 under the Act.<sup>22</sup>

(7) The Fund generally will invest at least 80% of its assets in the securities of the Index.

(8) Over time the Fund's tracking error<sup>23</sup> will not exceed 5%.

(9) The Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with BFA), as well as in municipal bonds not included in the Index, but which BFA believes will help the Fund track the Index.

(10) On or about August 31, 2020, the Fund will wind up and terminate, and its net assets will be distributed to the then-current shareholders.

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

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>24</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>25</sup> that the proposed rule change (SR-NYSEArca-2014-37), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

<sup>22</sup> See 17 CFR 240.10A-3.

<sup>23</sup> According to the Exchange, tracking error is the difference between the performance (return) of the Fund's portfolio and that of the Index.

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> According to the Exchange, when bonds are close substitutes for one another, pricing vendors can use executed trade information from all similar bonds as pricing inputs for an individual security. This can make individual securities more liquid, because valuations for a single security are better estimators of actual trading prices when they are informed by trades in a large group of closely related securities. As a result, securities are more likely to trade at prices close to their valuation when they need to be sold. See Notice, *supra* note 4, at n.11.

<sup>19</sup> Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

<sup>20</sup> The Commission previously has approved a proposed rule change relating to listing and trading on the Exchange of Units based on similar municipal bond indexes. See Securities Exchange Act Release No. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR-NYSEArca-2012-92) (order approving proposed rule change relating to the listing and trading of shares of the iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02).

<sup>21</sup> According to the Exchange, FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72534; File No. SR-NYSE-2014-12]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Rule 98 To Adopt a Principles-based Approach To Prohibit the Misuse of Material Nonpublic Information and Make Conforming Changes to Other Exchange Rules

July 3, 2014.

On March 18, 2014, New York Stock Exchange LLC (“NYSE” or the “Exchange”), 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> filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend Rule 98. The proposed rule change was published for public comment in the *Federal Register* on April 7, 2014.<sup>3</sup> On May 21, 2014, the Commission designated a longer period for Commission action on the proposed rule change.<sup>4</sup> The Commission received one comment on the proposal.<sup>5</sup> This order approves the proposed rule change.

#### I. Background and Introduction

The Exchange adopted Rule 98 in 1986, when NYSE specialist firms, which had been independent member-owned entities, increasingly became affiliates of larger member organizations. Because of the specialists’ position in the market, Rule 98 required an organizational separation between a specialist and its affiliates. The purpose of that separation was to eliminate or control conflicts of interest between the business activities of affiliates of the specialist and the specialist’s responsibilities to the

market and to any customer orders the specialist represented as agent.<sup>6</sup>

In 2008, the NYSE amended Rule 98 to adopt a more flexible, principles-based approach that among other things: (1) Redefined the persons to whom the rule applied; (2) allowed DMM operations to be integrated into better-capitalized member organizations; (3) permitted a DMM unit to share non-trading-related services with its parent member organization or approved persons; and (4) provided flexibility to member organizations and their approved persons in conducting risk management of DMM operations.<sup>7</sup> The principal effect of the 2008 Amendments was that affiliates of a DMM unit that were walled-off from the DMM unit were no longer prohibited from acting as an options market maker in a security in which the affiliated DMM was registered. However, the amended Rule 98 continued to prohibit the integrated unit from coordinating market making between its DMM and its options market maker.

The Exchange now proposes to further amend Rule 98 in order to provide DMM units with greater flexibility in structuring their operations and to move further toward a principles-based approach and away from prescribing particular structures for DMM units. Under this proposed rule change, certain information barriers would continue to be required (for example, between a DMM unit and an affiliated investment-banking desk), and other required protections, in addition to information barriers, would address the role of DMMs and the trading floor in the NYSE’s market. Proposed Rule 98 would, however, contain fewer prescriptions relating to the structure of DMM units, and it would instead—like similar rules relating to market-making firms on other exchanges<sup>8</sup>—impose a more general requirement that a member organization operating a DMM unit maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member organization’s business, (i) to prevent the misuse of material, non-public information by the member organization or persons associated with it and (ii) to ensure compliance with applicable federal laws and regulations and with Exchange rules.

The Exchange asserts that the instant proposal should provide member organizations operating DMM units with the means to better manage risk across a firm—for example, by integrating DMM unit positions and quoting information with other quotes and positions by other units within the firm. The Exchange posits that a member organization operating a DMM unit, in the context of risk management<sup>9</sup> and consistent with protections against the misuse of material non-public information,<sup>10</sup> should be able to consider the outstanding quotes of the DMM unit as well as traded positions for purposes of calculating net positions consistent with Rule 200 of Regulation SHO<sup>11</sup> and calculating intra-day net capital positions. Further, the Exchange asserts that a member organization should be able to integrate its DMM unit operations with its customer-facing operations because the instant proposal, in tandem with existing NYSE conduct rules,<sup>12</sup> FINRA’s ongoing surveillances for manipulative conduct, and FINRA’s program to examine member firms that act as DMMs and to review and approve their policies and procedures for complying with Rule 98, should provide a regulatory framework that guards customer interests and protects against the misuse of material non-public information, while increasing the operational flexibility of member organizations.

#### II. Description of the Proposed Amendments to Rule 98

Proposed Rule 98(a)(1) provides that the rule shall apply to all member organizations seeking to operate a DMM unit at the Exchange and to any approved person that may provide services to a DMM unit.

<sup>9</sup> See, e.g., 17 CFR part 240.15c3-5 (Risk Management Controls for Brokers or Dealers with Market Access).

<sup>10</sup> See, e.g., 15 U.S.C. 78o(g). Section 15(g) of the Act requires every registered broker or dealer to “establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such broker’s or dealer’s business, to prevent the misuse . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.”

<sup>11</sup> 17 CFR 242.200. Under Regulation SHO, determination of a seller’s net position is based on the seller’s positions in the security in all proprietary accounts. See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48010 n.22 (Aug. 6, 2004); see also Exchange Act Release No. 48709 (Oct. 29, 2003), 68 FR 62972, 62991 and 62994 (Nov. 6, 2003); Letter from Richard R. Lindsey, Director, Division of Market Regulation, to Roger D. Blanc, Wilkie Farr & Gallagher, SEC No-Action Letter, 1998 SEC No-Act. LEXIS 1038, p. 5 (Nov. 23, 1998); Exchange Act Release No. 30772 (June 3, 1992), 57 FR 24415, 24419 n.47 (June 9, 1992); Exchange Act Release No. 27938 (Apr. 23, 1990), 55 FR 17949, 17950 (Apr. 30, 1990).

<sup>12</sup> See, e.g., NYSE Rule 5320 (“Manning Rule”).

<sup>26</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.

<sup>3</sup> Securities Exchange Act Release No. 71837 (Apr. 1, 2014), 75 FR 19146.

<sup>4</sup> See Securities Exchange Act Release No. 72203, 79 FR 30667 (May 28, 2014).

<sup>5</sup> See E-mail from Dr. Lee Jackson, Esq. (Apr. 15, 2014) (“Jackson Comment”). The Commission does not believe the Jackson Comment raises any material or substantive issues.

<sup>6</sup> See Securities Exchange Act Release No. 23768 (Nov. 3, 1986), 51 FR 41183 (Nov. 13, 1986) (SR-NYSE-85-25).

<sup>7</sup> See Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 34 FR 58328 (Aug. 18, 2008) (SR-NYSE-2008-45) (“2008 Amendments”).

<sup>8</sup> See, e.g., NYSEArca Equities Rule 6.3 and BATS Rule 5.5.