



Martha Redding
Associate General Counsel
Assistant Secretary

New York Stock Exchange
11 Wall Street
New York, NY 10005
T + [REDACTED]
F + [REDACTED]

April 1, 2016

VIA E-MAIL

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-77491(SR-NYSE-2016-24)

Dear Mr. Fields:

NYSE LLC; filed the attached Amendment No. 2 to the above-referenced filing on March 31, 2016.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials "BJF" followed by a stylized flourish.

Encl. (Amendment No. 2 to SR-NYSE-2016-24)

Required fields are shown with yellow backgrounds and asterisks.

Filing by New York Stock Exchange
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Clare Last Name * Saperstein
 Title * Associate General Counsel NYSE Group Inc
 E-mail * [REDACTED]
 Telephone * [REDACTED] Fax [REDACTED]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)
 Assistant Secretary

Date 03/31/2016
 By Martha Redding
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Martha Redding, [REDACTED]

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. This Amendment No. 2 supersedes the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Clare F. Saperstein
Associate General Counsel
NYSE Group, Inc.
(212) 656-2355

David De Gregorio
Senior Counsel
NYSE Group, Inc.
(212) 656-4166

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

- (a) Purpose

The Exchange proposes to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. In particular, the Exchange proposes to:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

- Make changes to the rules related to the pre-opening indication process by:
 - amending Rules 15 and 123D to consolidate the requirements for publication of pre-open indications in a single rule (Rule 15);
 - changing the conditions in which a Designated Market Maker (“DMM”) is required to publish a pre-opening indication in a security to an anticipated 5% move from a security’s reference price and, during extreme market-wide volatility, an anticipated 10% from a security’s reference price; and
 - providing for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications.

- Make changes to Rule 123D related to the opening process by:
 - incorporating all procedures relating to openings, other than pre-opening indications, in Rule 123D; and
 - Specifying that DMMs may effect an opening of a security electronically within specified percentage and volume parameters, which would be doubled during extreme market-wide volatility; and
 - providing for the CEO of the Exchange to temporarily suspend price and volume limitations for a DMM automated open or the requirement for prior Floor Approval before opening or reopening a security.

- Delete Rule 48

- Make conforming changes to Rules 80C, 124 and 9217.

The Exchange believes that the proposed changes will enhance transparency regarding the Exchange’s opening process by specifying new parameters for how the opening at the Exchange would be effectuated on trading days experiencing extreme market-wide volatility, which would include both additional information before the open through the use of new parameters for pre-opening indications and expanded ability for DMMs to effectuate an opening electronically. The proposed rule changes are designed to preserve the Exchange’s existing model, which values human touch when opening securities with significant price or volume disparity, while at the same time promoting automated measures to have as many securities open as close to 9:30 a.m. as feasible, even during extreme market-wide volatility.

Background

The Exchange’s current pre-opening procedures are outlined in Rules 15 (Pre-Opening Indications), 48 (Exemptive Relief – Extreme Market Volatility

Condition), and 123D (Openings and Halts in Trading).

Rule 15(a) provides that if the opening transaction in a security will be at a price that represents a change of more than the “applicable price change” specified in the Rule,³ the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (“Rule 15 Indication”), which represents a price range in which a security is anticipated to open.

A Rule 15 Indication is published on the Exchange’s proprietary data feeds only and includes the security and the price range within which the DMM anticipates the opening transaction will occur, and would include any orally-represented Floor broker interest for the open. The applicable price ranges for determining whether to publish a Rule 15 Indication are based on five different price buckets and are expressed in dollar and percentage parameters:

Exchange Closing Price	Applicable Price Change (More Than)
Under \$20.00	\$0.50
\$20 – \$49.99	\$1.00
\$50.00 - \$99.99	\$2.00
\$100 - \$500	\$5.00
Above \$500	1.5%

Rule 123D also mandates that pre-opening indications be published if the opening price would result in a significant price change from the previous close or if the opening is delayed past 10:00 a.m. Eastern Time (“Rule 123D Mandatory Indication”). The DMM is responsible for publishing the Rule 123D Mandatory Indication and, when determining the price range for the indication, takes into consideration Floor broker interest that has been orally entered and what, at a given time, the DMM anticipates the dealer participation in the opening transaction would be. Rule 123D Mandatory Indications are published to the Consolidated Tape and proprietary data feeds. The applicable price ranges for determining whether an opening price would be a “significant” price change

³ In current Rule 15, other than for certain American Depositary Receipts (“ADRs”), the “applicable price change” is measured from a security’s last reported sale price on the Exchange, the security’s offering price in the case of an initial public offering (“IPO”), or the security’s last reported sale price on the market from which it is being transferred. For an ADR where the trading day of the underlying security in the primary foreign market for the ADR concludes after the previous day’s trading in the US has ended, the “applicable price change” is measured from closing price of the primary foreign market. For an ADR where the primary foreign market on which the underlying security is open for trading at the time of the opening of the Exchange, the “applicable price change” is measured from parity with the last sale price of the underlying security.

requiring a Rule 123D Mandatory Indication are based on three price buckets and are expressed in a mixture of dollar (1 point = one dollar) and percentage parameters:

Previous NYSE Closing Price	Price Change (equal to or greater than)
Under \$10.00	1 point
\$10 – \$99.99	the lesser of 10% or 3 points
\$100 and Over	5 points

Rule 48 provides that a “qualified Exchange officer”⁴ can invoke an extreme market volatility condition at the open (or reopen of trading following a market-wide halt of securities) during which time the Exchange can suspend the requirements of Rules 15 and 123D, and in particular, the requirement to publish pre-opening indications. Rule 48 is intended to be invoked only in those situations where the potential for extreme market volatility would likely impair Floor-wide operations at the Exchange by impeding the fair and orderly opening or reopening securities.⁵

Finally, Rule 123D, which in addition to setting forth requirements for certain pre-opening indications, also specifies procedures relating to openings, including that it is the responsibility of each DMM to ensure that securities open as close to the opening bell as possible and that securities can be opened on a trade or a quote. The rule further provides that openings may be effectuated manually or electronically.

Proposed Rule Change

The Exchange proposes to amend Rules 15, 48, and 123D to introduce greater efficiency and transparency into its opening process by, among other things, consolidating its rules regarding pre-opening indications into a single rule (Rule 15), introducing a new, single percentage parameter for the publication of pre-opening indications that would double on volatile trading days, and consolidating opening procedures into Rule 123D, including specifying parameters of when a DMM may effect an opening electronically, and consolidating the procedures of Rule 48 into Rules 15 and 123D, as applicable. The Exchange also proposes conforming changes to Rules 80C, 124 and 9217.

⁴ A “qualified Exchange officer” means the Chief Executive Officer of ICE, or his or her designee, or the Chief Regulatory Officer of the Exchange, or his or her designee.

⁵ See Securities Exchange Act Release No. 56920 (December 6, 2007), 72 FR 70915 (December 13, 2007) (SR-NYSE-2007-111) (“Rule 48 Notice of Filing”).

Pre-Opening Indications

The Exchange proposes to make changes to the pre-opening indication process. The Exchange would consolidate the requirements relating to pre-opening indications into Rule 15(a) – (f). Because the Exchange proposes all new rule text in Rule 15(a) - (f), the Exchange proposes to delete paragraphs (a) and (b) of current Rule 15, re-number Rule 15(c) as Rule 15(g), delete rule text in Rule 123D(b) relating to mandatory indications, and amend the title of Rule 15 to add the phrase “and Opening Order Imbalance Information” so that the rule would be titled “Pre-Opening Indications and Opening Order Imbalance Information.” In amending Rule 15, the Exchange would establish new conditions for when DMMs are required to publish pre-opening indications.

Proposed Rule 15(a), entitled “Pre-Opening Indications,” would provide that a pre-opening indication would include the security and the price range within which the opening price is anticipated to occur. This proposed rule text is based on the last clause of the first sentence of current Rule 15(a), which provides that a pre-opening indication includes the security and the price range within which the opening transaction is anticipated to occur. Proposed Rule 15(a) would further provide that a pre-opening indication would be published via the securities information processor (“SIP”) and proprietary data feeds. This proposed rule text is based on the way in which Rule 123D Mandatory Indications are currently published to both the SIP and proprietary data feeds. The Exchange proposes to use the term “securities information processor” instead of “Consolidated Tape” to use the term more commonly used in the industry.⁶

Proposed Rule 15(b), entitled “Conditions for Publishing a Pre-Open Indication,” would set forth the conditions in which a DMM is required to publish a pre-opening indication.

- Proposed Rule 15(b)(1) would provide that a DMM will publish a pre-opening indication before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range,” as defined in proposed Rule 15(d), from a specified “Reference Price,” as defined in proposed Rule 15(c), before the security opens. The procedures for publishing a pre-opening indication would be described in Rule 15(e). This proposed rule text is based on current Rule 15(a), which uses the term “applicable price range” and describes the reference prices used for purposes of current Rule 15(a). The Exchange proposes to define the “Reference Price” and “Applicable Price Range” in proposed Rules 15(c) and (d), described below. The requirement for DMMs to publish pre-opening indications is based on current Rule 15(a), which provides that the DMM shall issue a pre-opening indication if the conditions set forth in the rule are met.

⁶ See, e.g., Supplementary Material .01 to Rule 19.

- Proposed Rule 15(b)(2) would specify that when making a determination of what the opening transaction price would be, the DMM will take into consideration all interest eligible to participate in the opening transaction, including electronically-entered orders, the DMM's own interest, and any interest represented orally in the crowd. This proposed rule text would be new and is designed to promote transparency in Exchange rules that all interest eligible to participate in the opening transaction is considered when publishing a pre-opening indication.
- Proposed Rule 15(b)(3) would provide that if a DMM is unable to publish a pre-opening indication for one or more securities due to a systems or technical issue, the Exchange may publish the pre-opening indication. This proposed rule text is based in part on current Rule 15(a), which provides that either the DMM or the Exchange shall publish a pre-opening indication. The Exchange proposes a substantive difference to provide that the Exchange "may" rather than "shall" publish a pre-opening indication. As set forth in current Rule 123D(a)(5), which was added after the applicable rule text in Rule 15(a),⁷ if a DMM is unavailable to open a security and the Exchange opens trading, the Exchange will not publish a pre-opening indication. Because the Exchange is not obligated to publish pre-opening indications in such scenario, the Exchange proposes to make Rule 15(b)(3) consistent with that rule.

Proposed Rule 15(c), entitled "Reference Price," would provide in paragraph (1) that the Reference Price for a security (other than an American Depository Receipt ("ADR")) for purposes of the proposed rule would be:

- the security's last reported sale price on the Exchange (proposed Rule 15(c)(1)(A));
- in the case of an IPO, the security's offering price (proposed Rule 15(c)(1)(B)); or
- the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange (proposed Rule 15(c)(1)(C)).

This proposed rule text is based on current Rule 15(a).⁸

Proposed Rule 15(c)(2) would provide that the Reference Price for ADRs for purposes of the proposed rule would be:

⁷ See Securities Exchange Act Release No. 76290 (Oct. 28, 2015), 80 FR 67822 (Nov. 3, 2015) (SR-NYSE-2015-49).

⁸ See supra note 3.

- the closing price of the security underlying the ADR in the primary foreign market in such security when the trading day of the primary foreign market concludes (proposed Rule 15(c)(2)(A)); or
- based on parity with the last sale price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market is open for trading at the time of the opening on the Exchange (proposed Rule 15(c)(2)(B)).

This proposed rule text is based on current Rule 15(b), with non-substantive differences for clarity and to use the defined term “Reference Price” in the proposed rule text.⁹ Proposed Rule 15(c)(3) would further provide that the Reference Price for reopening a security following a halt would be the security’s last reported sale price on the Exchange. The Exchange proposes to specify the Reference Price for reopening following a halt because the Reference Price would be the same for all securities, including ADRs, which would be trading on the Exchange.

Proposed Rule 15(d) would set forth the Applicable Price Ranges for determining whether a DMM is required to disseminate a pre-opening indication. The Exchange proposes to eliminate the current price buckets in Rules 15 and 123D and instead use a single percentage parameter as the Applicable Price Range for all securities, regardless of price of the security. As proposed, except during extreme market-wide volatility as set forth in proposed Rule 15(d)(2), a DMM would be required to publish a pre-opening indication if a security is expected to open at a price more than 5% away from the Reference Price. The Exchange believes that the proposed 5% parameter applicable to all securities would simplify and streamline the Exchange’s rules regarding required pre-opening indications by having a single percentage parameter that would be applied across all securities, rather than having different price buckets and percentage parameter ranges to track. The Exchange further believes that the proposed single percentage parameter would result in a similar number of pre-opening indications as are currently published pursuant to Rule 123D, while at the same time simplifying the process for DMMs.

For example, using trade data for the month of October 2015, which was a month of relative trading stability and volumes, current Rule 123D Mandatory Indication parameters required indications for 15 securities on an average daily basis, which represents approximately 0.46% of the securities traded on the Exchange. Applying the proposed new percentage parameter of 5% to the same October 2015 trade data, DMMs would have been required, on average, to publish 33 pre-opening indications, which represents 1.01% of securities that trade on the Exchange. The Exchange believes that the incremental increase in number of pre-

⁹ The seventh paragraph of Rule 123D(b), which the Exchange proposes to delete, similarly describes the reference price to be used for a foreign-listed security.

opening indications that would have been published pursuant to the proposed new single percentage parameter would promote transparency in the opening of securities at the Exchange.¹⁰

Under current rules, the Exchange may suspend the requirement to publish pre-opening indications if a market-wide extreme market volatility condition is declared under Rule 48. This rule was adopted, in part, because of the manual nature of publishing pre-opening indications, and if DMMs were required to publish Rule 123D Mandatory Indications for multiple securities, it could delay the opening process and result in a large number of securities opening past 9:30 a.m. Eastern Time.¹¹ Historically, the Exchange has declared such a condition if, before the opening of trading, the E-mini S&P 500 Futures are plus or minus 2% from the prior day's closing price of the E-mini S&P 500 Futures. However, based on the events of the week of August 24, 2015, when the Exchange declared extreme market volatility conditions on August 24, 25, and 26, the Exchange appreciates that the absence of any pre-opening indications may leave a void in the information available for market participants to assess the price at which a security may open. Yet, because market-wide volatility would cause the price of most or all securities to move significantly away from the last sale price on the Exchange, the Exchange believes that the 5% price move appropriate for "normal" trading days would result in a DMM being required to disseminate more pre-opening indications than is feasible.

Accordingly, the Exchange proposes to amend its rules to provide that on trading days with extreme market-wide volatility, the Applicable Price Range would be 10%, or double the Applicable Price Range on regular trading days. Specifically, proposed Rule 15(d)(2) would provide that, if as of 9:00 a.m. Eastern Time ("ET"), the E-mini S&P 500 Futures are plus or minus 2% from the prior day's closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 80B, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM would be required to publish a pre-opening indication in a security if the price of that security is expected to open at a price more than 10% away from the Reference Price. By proposing to specify the conditions in which the Applicable Price Range would be 10%, the Exchange would promote transparency in

¹⁰ For purposes of this analysis, the Exchange compared the proposed new percentage parameters against only the current Rule 123D Mandatory Indications because these indications are more widely distributed via the SIP to market participants, and therefore more likely to be relied upon for purposes of assessing the opening price of a security on the Exchange. In addition, unlike Rule 15 Indications, a DMM is required to update Rule 123D Mandatory Indications, and thus this form of pre-opening indication is more likely to track to the actual opening price of a security.

¹¹ See Rule 48 Notice of Filing, *supra* note 5 at 70916.

Exchange rules so that market participants will know when the double-wide percentage parameter would be applied. Because the standard for extreme market-wide volatility would be specified in the rule, the Exchange would not need to provide separate notification on a trading day when the double-wide percentages would be applicable.

By proposing to specify in its rules that the Applicable Price Range would be 10%, rather than 5%, when the market is more volatile, the Exchange would require DMMs to disseminate pre-opening indications in those securities experiencing the greatest price movement. Under current rules, the Exchange's only option when the overall market is volatile is to lift the requirement for pre-opening indications under Rule 48. The Exchange also proposes to use the 10% percentage parameter when reopening securities following a market-wide trading halt under Rule 80B. The Exchange believes that widening the parameters for pre-opening indications following a market-wide trading halt would be appropriate because the reason for the trading halt was market-wide volatility, and thus the reopening of securities would face similar pricing pressure as circumstances when there is pre-opening extreme market-wide volatility. The Exchange also proposes that it would have the authority to use the 10% Applicable Price Range when it is necessary or appropriate for the maintenance of a fair and orderly market. For example, if the E-mini S&P 500 Futures were not plus or minus 2% as of 9:00 a.m., but moved to that level between 9:00 and 9:30, it may be appropriate, for the maintenance of a fair and orderly market, to use widened percentage parameters.

To determine the percentage parameter that would be appropriate for trading days with extreme market-wide volatility, the Exchange reviewed trading data from August 24, 25, and 26, 2015 and assessed how many Rule 123D Mandatory Indications would have been required under current rules, and how many pre-opening indications would have been required if a 5% and 10% percentage parameter were used on those days. Taking for example August 24, 2015, as set forth on Table 1 below, the data show that, had the Exchange not invoked Rule 48 lifting the requirement to publish Rule 123D Mandatory Indications, there would have been 638 securities (19% of securities) for which DMMs would have been required to publish Rule 123D Mandatory Indications. As set forth in Table 2 below, a 5% percentage parameter would have required 1,460 pre-opening indications (44% of securities) on August 24, 2015, more than twice as many as under the current parameters. As noted above, the Exchange believes that this would be too many pre-opening indications for DMMs to process on a trading day without impacting their ability to timely open their assigned securities.

By contrast, as set forth in Table 2 below, a 10% percentage parameter would have required pre-opening indications in 278 securities (8.4% of securities) on August 24, 2015. While this number is still higher than the number of pre-opening indications that would have been published on an average trading day in October using the 5% percentage parameter (see above), the Exchange believes

that it strikes the appropriate balance between providing additional pre-opening information to investors and enabling the DMM’s to timely open their assigned securities. As set forth in more detail in Tables 1 and 2 below, August 24 represents an outlier, even for days when there has been extreme market-wide volatility. For other days in 2015 when the Exchange declared an extreme market-wide volatility under Rule 48, as set forth in Tables 1 and 2 below, applying a 10% parameter would not materially change the number of pre-opening indications being published.

Exchange Closing Price	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015			8/25/2015			8/26/2015			1/27/2015		
		Total # of Stocks	# Stocks over Price or Volume Parameter	% Over Total	Total # of Stocks	# Stocks over Price or Volume Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total
Under \$10.00	\$1	3284	2	0.06%	3293	17	0.52%	3293	2	0.06%	3294	4	0.12%	3295	0	0.00%
\$10.00-\$99.99	Lessor of 10% or \$3	3284	7	0.21%	3293	499	15.15%	3293	48	1.46%	3294	15	0.46%	3295	4	0.12%
\$100 or greater	\$5	3284	6	0.18%	3293	122	3.70%	3293	31	0.94%	3294	20	0.61%	3295	8	0.24%
Total			15	0.46%		638	19.37%		81	2.46%		39	1.18%		12	0.36%

Exchange Closing Price	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015			8/25/2015			8/26/2015			1/27/2015		
		Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total
If S&P 500 e-Mini Futures Change Less Than +/-2%	5%	3283	33	1.01%	3293	1460	44.34%	3293	255	7.74%	3294	67	2.03%	3295	17	0.52%
If S&P 500 e-Mini Futures Change Greater Than +/-2%	10%	3283	8	0.24%	3293	278	8.44%	3293	51	1.55%	3294	18	0.55%	3295	2	0.00%

Proposed Rule 15(e), entitled “Procedures for publishing a pre-opening indication,” would set forth proposed procedures a DMM would use when publishing a pre-opening indication. As discussed below, these procedures are based on existing procedures currently set forth in Rule 123D, with specified differences.

Proposed Rule 15(e)(1) would provide that publication of pre-opening indications requires the supervision and approval of a Floor Governor.¹² This proposed rule change is based on the sixth paragraph of Rule 123D(b). The Exchange proposes a substantive change in that the proposed rule would require the supervision and approval of a Floor Governor, rather than supervision and approval of a Floor Official, as set forth in the current rule. The Exchange would also eliminate the requirement in Rule 123D that if a situation involves a bank or brokerage stock, the approval of an Executive Floor Governor is required, and if an Executive Floor Governor is unavailable, a Floor Governor or Senior Floor Governor’s approval is required. The Exchange believes that requiring Floor Governor approval for all securities would involve the appropriate review by an experienced Floor official, while at the same time simplifying the approval process to require a

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Rule 46 describes the different categories of Floor Officials, which are Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors, and Executive Floor Governors. Floor Governors are generally more senior members of the Trading Floor or qualified Exchange employees and are also empowered to perform any duty of a Floor Official.

single category of Floor Official to approve a pre-opening indication regardless of the type of security.¹³

Proposed Rule 15(e)(2) would provide that a pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication. Proposed Rule 15(e)(3) would further require that if a pre-opening indication is a spread wider than \$1.00, the DMM should undertake best efforts to publish an updated pre-opening indication of \$1.00 or less before opening the security, as may be appropriate for the specific security. Proposed Rules 15(e)(2) and (e)(3) are based, in part, on the second and third bullet points following the ninth paragraph of Rule 123D(b),¹⁴ but with new rule text to simplify the requirements regarding updating pre-opening indications. With respect to proposed Rule 15(e)(3), for higher-priced securities, a pre-opening indication wider than \$1.00 may be appropriate and it may not be necessary to narrow such indication any further, particularly since Opening Imbalance Information pursuant to Rule 15(c) (proposed Rule 15(g)) would also be disseminated regarding the security.

Proposed Rule 15(e)(4) would provide that, after publication of a pre-opening indication, the DMM must wait for the following minimum specified periods before opening a security:

- Proposed Rule 15(e)(4)(A) would provide that, when using the 5% Applicable Price Range specified in proposed Rule 15(d)(1), a minimum of three minutes must elapse between publication of the first indication and a security's opening. The rule would further provide that, if more than one indication has been published, a security may be opened one minute after the last published indication provided that at least three minutes have elapsed from the dissemination of the first indication. These first two sentences of proposed Rule 15(e)(4)(A) are based on rule text set forth in the twelfth and thirteenth paragraphs of current Rule 123D(b). Proposed Rule 15(e)(4)(A) would further provide that the DMM may open a security less than the required wait times after the publication

¹³ The Exchange would also be deleting the 14th through 16th paragraphs of Rule 123D(b) regarding Floor Official approval for "tape indications," which are Rule 123D Mandatory Indications. The Exchange believes that proposed Rule 15(e)(1) simplifies the approval process and obviates the need for this Rule 123D rule text.

¹⁴ The second bullet following the ninth paragraph of Rule 123D(b) requires that the number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical. The third bullet provides for similar requirements following a non-regulatory halt, and specifically that a final indication with a one point (one dollar) spread would be appropriate.

of a pre-opening indication if the imbalance is paired off at a price within the Applicable Price Range. This proposed exception to the three-minute waiting requirement is new and is because the Exchange believes that, if equilibrium in price has been reached at a price within the Applicable Price Range, i.e., at a price that would not have required a pre-opening indication in the first instance, there is no reason to require the DMM to further delay the opening of the security in an effort to attract offsetting interest.

- Proposed Rule 15(e)(4)(B) would provide that, when using the 10% Applicable Price Range specified in Proposed Rule 15(d)(2), a minimum of one minute must elapse between publication of the first indication and a security's opening and that if more than one indication has been published, a security may be opened without waiting any additional time. As discussed above, proposed Rule 15(d)(2) would provide for new percentage parameters for trading days with extreme market-wide volatility. Based on the analysis of trade data for August 24, 2015, even with the new percentage parameters, there is the potential for 278 pre-opening indications to be required on an extremely volatile trading day. Because these pre-opening indications would be manually published by the DMM, the Exchange believes that eliminating additional wait times would enable the DMMs to facilitate a speedy opening for a security that has been subject to a pre-opening indication on days with extreme market-wide volatility.

Proposed Rule 15(e)(5) would provide that, if trading is halted for a non-regulatory order imbalance, a pre-opening indication must be published as soon as practicable after the security is halted. This proposed rule text is based on the first sentence of the third bulleted paragraph following the ninth paragraph in Rule 123D(b), with a proposed substantive difference that a pre-opening indication should be published "as soon as practicable," rather than "immediately," after a security is halted. The Exchange believes that the proposed approach provides for more flexibility for the DMM to assess the order imbalance and publish a pre-opening indication that takes into consideration all applicable factors.

Proposed Rule 15(e)(6) would set forth the requirements for pre-opening indications when reopening a security following a trading pause under Rule 80C.¹⁵ Proposed Rule 15(e)(6)(A) would provide that a pre-opening indication may be published without prior Floor Governor approval. Proposed Rule 15(e)(6)(B) would provide that a pre-opening indication would not need to be updated before reopening the security, and the security may be reopened outside

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Rule 80C sets forth the Exchange's rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act known as the Limit Up/Limit Down ("LULD") Plan.

of any prior indication. Lastly, proposed Rule 15(e)(6)(C) would provide that the reopening is not subject to the minimum waiting time requirements in Proposed Rule 15(e)(4). Proposed Rules 15(e)(6)(A) – (C) are based on Rule 80C(b)(2)(A), with non-substantive differences to use different rule text cross-references.

Proposed Rule 15(f), entitled “Temporary Suspension of Pre-Opening Indications,” would provide in proposed Rule 15(f)(1) that if the CEO of the Exchange determines that a Floor-wide event is likely to impact the ability of DMMs to arrange for a fair and orderly opening or reopening and that absent such relief, operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the requirement to publish pre-opening indications under Rule 15 prior to opening or reopening a security following a market-wide trading halt.¹⁶

Proposed Rule 15(f) is based in part on Rule 48, which provides that a qualified Exchange officer may declare an extreme market volatility condition and temporarily suspend the requirements for pre-opening indications.¹⁷ Because the Exchange would be specifying new percentage parameters for pre-opening indications on trading days with market-wide volatility, the Exchange does not believe that it needs Rule 48 in its current form. While the Exchange expects that its other proposed changes to DMMs’ requirements related to pre-opening indications will make it unlikely that a complete suspension of pre-opening indications would be required, the Exchange believes it would be prudent for the CEO of the Exchange to retain the authority to temporarily suspend the requirements to make pre-opening indications for events that it cannot currently predict. Accordingly, rather than refer to extreme market-wide volatility as in current Rule 48, proposed Rule 15(f)(1) would refer to a Floor-wide event that could impact the fair and orderly opening or reopening of securities more generally.

Proposed Rule 15(f)(2), which is based on Rule 48(c)(1)(A), would specify the range of factors that the CEO of the Exchange would be required to consider in making any determination to temporarily suspend the requirement for pre-opening

¹⁶ Pursuant to Rule 1, the CEO of the Exchange may formally designate one or more qualified employees of Intercontinental Exchange, Inc. (“ICE”) to act in place of any person named in a rule as having authority to act under such rule in the event the named person in the rule is unavailable to administer that rule.

¹⁷ Rule 48(d) defines a “qualified Exchange officer” for purposes of Rule 48 as the CEO of ICE, or his or her designee, or the Chief Regulatory Officer (“CRO”) of the Exchange, or his or her designee. The Exchange proposes to streamline its rules to specify that only the CEO of the Exchange would have the authority to temporarily suspend the requirement for pre-opening indications. However, pursuant to Rule 1, the CEO could delegate this authority to other qualified ICE employees.

indications.¹⁸ In addition, similar to Rule 48(c)(1)(B) and 48(c)(1)(C), proposed Rules 15(f)(2)(B) and (C) would require the CEO to consult with the CRO of the Exchange in making a determination under proposed Rule 15(f)(1) and inform Commission staff as promptly as practicable that pre-opening indications under Rule 15 have been temporarily suspended. Proposed Rule 15(f)(3), which is based on Rule 48(c)(4), would provide that a temporary suspension under Rule 15(f) would be in effect only for the trading day on which it was declared.¹⁹ Finally, proposed Rule 15(f)(4) would provide that notwithstanding a temporary suspension of the requirement to publish pre-opening indications in a security under Rule 15, a DMM or the Exchange may publish a pre-opening indication for one or more securities. This proposed rule text, which is based in part on Rule 48(c)(5), would allow a DMM or the Exchange to publish a pre-opening indication, even if the rule were suspended.²⁰ Unlike Rule 48(c)(5), which specifies conditions when the DMM should still publish a pre-opening indication, proposed Rule 15(f)(3) would not require pre-opening indications, but rather, would allow them to be published even if the rule were temporarily suspended.

Because the Exchange has added new subsections to Rule 15, the Exchange proposes to renumber Rule 15(c) as Rule 15(g) and to add a header to this subsection of rule entitled “Opening Order Imbalance Information.” In addition to re-designating the rule from Rule 15(c) to Rule 15(g), the Exchange proposes non-substantive differences to re-number the subsections of proposed Rule 15(g) to use the same numbering convention as proposed for proposed Rule 15(a) – (f), delete the phrase “the provisions of” in proposed Rule 15(g)(2)(B), and remove the reference to subparagraph (b) by deleting the phrase “or (b).”

The Exchange also proposes a substantive difference to change Rule 15(c)(3)(iii) (re-numbered as proposed Rule 15(g)(3)(C)) to increase the frequency with which

¹⁸ As provided for in Rule 48(c)(1)(A), these factors include volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions.

¹⁹ Rule 48(c)(4) provides that that a declaration of an extreme market volatility condition under Rule 48 shall be in effect only for the particular opening or reopen for the trading session on the particular day that the extreme market volatility condition if determined to exist.

²⁰ Rule 48(c)(5) provides that a declaration of an extreme market volatility condition shall not relieve DMMs from the obligation to make pre-opening indications in situations where the opening of a security is delayed for reasons unrelated to the extreme market volatility condition.

the Exchange disseminates Order Imbalance Information²¹ beginning at 9:20 a.m. ET. Currently, under Rule 15(c)(3)(iii), Order Imbalance Information is disseminated approximately every 15 seconds between 9:20 am ET and the opening of trading in that security. The Exchange proposes to disseminate Order Imbalance Information approximately every 5 seconds between 9:20 a.m. ET and the opening of trading in that security. The Exchange believes that increasing the frequency with which Order Imbalance Information is disseminated would provide market participants with additional updated pre-opening information, thus promoting transparency for the opening transaction.

Finally, the Exchange proposes to add new Supplementary Material .10 to Rule 15 providing that, unless otherwise specified in the proposed Rule,²² references to an opening transaction include a reopening transaction following a trading halt or pause in a security. Currently, Rule 123D Mandatory Indications are required for both openings and reopenings. Because proposed Rule 15 indications would similarly be required for openings and reopenings following a halt or pause, the Exchange proposes to add Supplementary Material .10 to Rule 15.

DMM Automated Openings

As noted above, the process for publishing either Rule 15 Indications or Rule 123D Mandatory Indications is manual, and is generally followed by the DMM effecting the opening of a security manually rather than electronically. Consistent with this approach, the Exchange currently systemically blocks DMMs from opening a security electronically if the opening price would be outside of price parameters that are based on the price buckets and applicable price ranges specified in Rule 15(a). The Exchange similarly blocks DMMs from electronically opening a security if size of the opening transaction would be a significant volume, which similarly would indicate the potential need for manual oversight of the opening process.

Because the DMM is not obligated to open a security electronically, the Exchange has not historically specified in its rules the parameters for when the DMM may

²¹ Order Imbalance Information reflects real-time order imbalances that accumulate prior to the opening transaction on the Exchange and the price at which interest eligible to participate in the opening transaction may be executed in full. Order Imbalance Information disseminated pursuant to Rule 15(c) includes all interest eligible for execution in the opening transaction of the security in Exchange systems, i.e., electronic interest, including Floor broker electronic interest, entered into Exchange systems prior to the opening. Order Imbalance Information is disseminated on the Exchange's proprietary data feeds. See Rule 15(c)(1).

²² See, e.g., proposed Rules 15(d)(2) (referring only to reopenings following a market-wide trading halt under Rule 80B) and 15(e)(6) (specifying different procedures when reopening trading following a trading pause).

effect an opening electronically.²³ However, following the events of the week of August 24, 2015, the Exchange believes that specifying in Exchange rules the conditions in which a DMM is permitted to open a security electronically would provide greater transparency in Exchange rules. The Exchange therefore proposes to amend Rule 123D(a) to specify when a DMM may effect an opening electronically.

In specifying parameters for when a DMM may effectuate an opening electronically, the Exchange proposes to adopt parameters and requirements that would be structured similarly to the proposed parameters for new Rule 15 pre-opening indications, as discussed above. To effect this change, the Exchange proposes new subsection numbering to Rule 123D(a)(1) to break out the third and fourth sentences of current Rule 123D(a)(1) to be proposed Rules 123D(a)(1)(A) and (B).²⁴ The Exchange proposes to add to proposed Rule 123D(a)(1)(B) that Exchange systems would not permit a DMM to open a security electronically if a DMM has manually entered Floor interest. This is how Exchange systems currently function and is similar to Rule 123C.10 regarding when a DMM may close a security electronically.

The Exchange proposes to set forth the parameters for when a DMM may effect an opening electronically in new proposed Rules 123D(a)(1)(B)(i) and (ii):

- Proposed Rule 123D(a)(1)(B)(i) would provide that except under the conditions set forth in Rule 123D(a)(1)(B)(ii), a DMM may not effect an opening electronically if the opening transaction would be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e), or the matched volume for the opening transaction would be more than (a) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or (b) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter. For purposes of this Rule, the calendar quarters will be based on a January 1 to December 31 calendar year.
- Proposed Rule 123D(a)(1)(B)(ii) would provide that if as of 9:00 a.m. ET, the E-mini S&P 500 Futures are plus or minus 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange

²³ Rule 123D does not require DMMs to open a security electronically; a DMM may determine that in the particular circumstances for a security, manually opening the security may be warranted, even if the price would be within the Applicable Price Range. For example, if a Floor broker has represented an order in the Crowd, the DMM will open a security manually.

²⁴ The Exchange also proposes a non-substantive amendment to change the term "stock" to "security."

determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM could effect an opening electronically if the opening transaction would be at a price of up to 8% away from the Official Closing Price, as defined in Proposed Rule 123C(1)(e), without any volume limitations.

Similar to the new Applicable Price Ranges for pre-opening indications proposed in Rule 15(d) above, the Exchange proposes to use a single percentage parameter for all securities, regardless of price. The Exchange also proposes to double those percentage parameters on days with extreme market-wide volatility, and would use the same standard for determining whether there is market-wide volatility as is proposed in Rule 15(d)(2), described above. Because the Exchange continues to believe that, if a pre-opening indication has been published, a security is better served if a DMM effects a manual opening, the Exchange proposes to apply percentage parameters to DMM automated openings that are tighter than the requirements for publishing a pre-opening indication. In other words, if a pre-opening indication would be required under proposed Rule 15, the DMM would not be permitted to effect an opening electronically. To achieve this goal, the Exchange proposes that the percentage parameter on a regular trading day for DMM automated opens should be one percent lower than the percentage parameter for pre-opening indications on a regular trading day. And as with pre-opening indications, on a day with extreme market-wide volatility, the applicable percentage would be doubled.

The Exchange believes that the proposed conditions for when a DMM may effect an opening electronically would reduce the number of manual openings and enable more securities to open closer to 9:30 a.m. ET, both on regular trading days and on extremely volatile trading days such as August 24, 2015.

Tables 3 through 5 below illustrate how many securities would not be eligible for a DMM to effect an opening electronically when applying the current and proposed percentage and volume parameters to trade data from October 2015 and trade data from August 24, 2015.

Exchange Closing Price	Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)					8/24/15				
			Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter
Under \$20.00	100K	\$0.50	1,228	29	2.4%	9	21	1,300	546	42.0%	506	95
\$20-\$49.99	100K	\$1.00	991	30	3.0%	13	19	1,139	649	57.0%	646	67
\$50.00-\$32000	100K	\$2.00	534	35	6.6%	17	19	560	486	86.8%	486	70
Above \$32000	100K	1.50%	1	0	0.0%	0	0	1	1	100.0%	1	0
Total			2,754	94	3.4%	39	59	3,000	1,682	56.1%	1,639	232

Average Opening Volume in Previous Calendar Quarter	Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)					8/24/15				
			Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter
100,000 shares or less	150,000+ shares	4.00%	2,680	41	1.5%	36	8	2,924	1,682	57.5%	1,671	86
Over 100,000 shares	500,000+ shares	4.00%	74	6	8.1%	3	3	76	71	93.4%	71	33
	Total		2,754	47	1.7%	39	11	3,000	1,753	58.4%	1,742	119

Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015		
		Total # of Stocks Opening on Trade	# Stocks over Price Parameter	% Over Total	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total
none	8%	2,754	11	0.4%	3,000	573	19.1%

For example, as set forth in Table 3, using current price parameters and a 100,000 share volume parameter, in October 2015, 94 securities (13.4% of securities) on average each day were not eligible to be opened by the DMM electronically. As demonstrated in Table 4, using the proposed 4% price and tiered volume parameters, a comparable 47 securities (1.7% of securities) on average in October would not have been eligible to be opened by the DMM electronically.

With respect to the proposed volume parameters, the Exchange believes that having a parameter tied to higher-than-average opening volume in a security would better reflect whether opening electronically would be appropriate. For example, as the data show in Table 4, there were 74 securities averaging daily opening volume over 100,000 shares in the previous quarter (3Q15) and three of those securities had opening volume of over 500,000 shares on an average daily basis in October. The Exchange believes that if a security has a higher-than-average opening volume on a quarterly basis without any corresponding price dislocation, then the volume of shares trading on the opening for such securities is not representative of any volatility for that security, but rather, is a regular state of affairs that does not require a high-touch opening managed by a DMM on the trading Floor. Rather, such securities would benefit from being available for the DMM to open electronically in order to promote a fair and orderly opening at or near the open of trading.

As with pre-opening indications, the Exchange proposes to double the percentage parameter on trading days with extreme market-wide volatility and eliminate the volume parameter. As illustrated in Table 5, doubling the percentage parameter and eliminating the volume parameters would allow DMMs to open most securities electronically even during extreme market-wide volatility. As trade data from August 24, 2015 set forth in Table 3 illustrates, the current percentage parameters restricted DMMs from opening 1,753 securities electronically, which represents 58.4% of securities.²⁵ As set forth in Table 5, applying the proposed 8% percentage parameter would have allowed DMMs to open all but 573 securities electronically, which represents 19.1% of the securities traded on the Exchange.

The Exchange also proposes to add a new paragraph (c) to Rule 123D entitled “Temporary Suspension of DMM Automated Opening Limitations or Floor Official Approval.” Similar to proposed Rule 15(f), if the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the prohibition on a DMM opening a security electronically if the opening transaction would be more than the price or volume parameters specified in proposed Rule 123D(a)(1)(B). This would be a new suspension authority that relates to the proposed new price and volume parameters for when a DMM may open a security electronically. The Exchange believes that having this temporary suspension authority would be appropriate for situations if the DMM is unable to open a security manually, either due to unavailability of 11 Wall Street facilities or because of systems or technical issues with Floor-based tools for manually opening a security.

Proposed Rule 123D(c) would also provide that if the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange, and that absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend (i) the prohibition on a DMM opening a security electronically if the opening transaction will be more than the price or volume parameters specified in proposed Rule 123D(a)(1)(B); or (ii) the need under Rule 123D(b) for prior Floor Official approval to open or reopen a security following a market-wide trading halt. This proposed rule change is similar to authority in current Rule 48, which permits a qualified Exchange officer to temporarily suspend the need for prior Floor Official or prior NYSE Floor operations approval to open or reopen a security following a market-wide trading halt. While the Exchange expects that its other proposed changes to Rule 123D would make it unlikely that a complete

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On August 24, 2015, DMMs also chose not to open securities electronically, even if they would have been priced within the current price parameters.

suspension of prior Floor Official approval would be required, the Exchange believes it would be prudent for the CEO of the Exchange to retain the authority temporarily suspend such requirements for events that it cannot currently predict. The Exchange also proposes a new temporary suspension that correlates to the proposed new price and volume parameters for when a DMM may open a security electronically. The Exchange expects that this relief would be required if 11 Wall Street facilities were unavailable and DMMs would be required to open all securities remotely, and thus electronically.

Proposed Rule 123D(c)(2) – (3) are nearly identical to proposed Rule 15(f)(1) – (3), as described in greater detail above, with changes only to address that this proposed rule relates to the temporary suspension of the requirements for specified paragraphs of Rule 123D. Proposed Rule 123D(c)(2) – (3) is based on the same provisions of Rule 48 that proposed Rule 15(f)(2) – (4) is based on, which is discussed in greater detail above.

The miscellaneous and technical amendments proposed to Rule 123D are as follows:

- The Exchange proposes to amend Rule 123D(a)(5) (Pre-Opening Information) to change the citation to Rule 15(c) to 15(g) based on the proposed changes to Rule 15, described above, and delete the word “either” and the references to Rule 123D.
- The Exchange proposes to delete the phrase “Halts in Trading” from the heading of Rule 123D(b).
- Also in Rule 123D(b), the Exchange proposes to delete the text relating to the dissemination of mandatory indications beginning with the sentence “If an unusual situation exists, such as a large order imbalance, tape indications should be disseminated, including multiple indications if appropriate with the supervision of a Floor Official” through and including the sentence “An Executive Floor Governor or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.” This rule text all pertains to Rule 123D Mandatory indications, which, as discussed above, would be governed by proposed Rule 15.
- The Exchange proposes to add a new heading (c) entitled “Halts in Trading” before the sentence “Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials” in current Rule 123D(b) and change current headings (c) (Equipment Changeover) and (d) of Rule 123D to (d) and (e), respectively.
- Finally, in current Rule 123D(c) (Proposed Rule 123D(e)), to reflect that

all information relating to pre-opening indications, including the Applicable Price Ranges and Reference Prices, are now described in Rule 15, the Exchange proposes to delete the phrase “a significant order imbalance (one which would result in a price change from the last sale of one point or more for stocks under \$10, the lesser of 10% or three points for \$10—\$99.99 and five points if \$100 or more—unless a Floor Governor deems circumstances warrant a lower parameter) develops” and add the phrase “a pre-opening indication would be required to be published” in its place.

Rule 48

The Exchange proposes to delete Rule 48 in its entirety. As discussed above, the Exchange is proposing changes to Rules 15 and 123D that it believes will allow DMMs to publish pre-opening indications in a manageable number of securities, even on days of high volatility, which would promote transparency regarding opening prices at the Exchange. In addition, and as described above, the Exchange is incorporating into Rules 15 and 123D authority for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications, the pricing and volume limitations for a DMM to open a security electronically, and for a DMM to obtain Floor Official approval under Rule 123D(b) when opening or reopening a security, if the CEO of the Exchange determines that such relief is necessary to the ability of DMMs to open the securities and to the operation of the Exchange. Accordingly, the Exchange believes that the Rule 48 is no longer necessary.

Conforming and Technical Amendments – Rules 80C, 124 and 9217

Rule 80C

The Exchange proposes conforming amendments Rule 80C(b)(2), which governs a Trading Pause under the LULD Plan.

First, Rule 80C(b)(2) requires that the Exchange re-open the security in a manner similar to the procedures set forth in Rule 123D following a Trading Pause (as defined therein). The Exchange proposes to add a reference to Rule 15 to Rule 80C(b)(2), so that the requirement to re-open would be in a manner similar to Rules 15 and 123D.

Second, the Exchange proposes to delete subdivision (A) of Rule 80C(b)(2) in its entirety and mark the deleted text as “Reserved.” As noted above, the requirements for reopening a security following a trading pause set forth in Rule 80C would be codified in proposed Rule 15(d)(6).

Rule 124

The Exchange proposes to amend subsection (c)(1) of Rule 124 (Midday Auction), describing the reopening process for the Midday Auction in the same manner as in Rule 123D for reopenings, by adding “pre-opening” before the word “indication” in four places and deleting the reference “to the Consolidated Tape” in the first sentence.

Rule 9217

The Exchange also proposes to amend Rule 9217, which sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as set forth in Rule 9216(b). Rule 9217 permits a summary fine for violations of Rule 123D requirements for DMMs relating to openings, reopenings, delayed openings, trading halts, and tape indications. The Exchange proposes to delete the clause “tape indications” to reflect elimination of mandatory indications from Rule 123D. The Exchange believes this proposed change would add transparency and clarity to the Exchange’s rules.

Because of the technology changes associated with the proposed rule change, the Exchange will announce by Trader Update the implementation date of the changes.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that streamlining and consolidating pre-opening indications into a single rule (Rule 15) from two (Rules 15 and 123D) would remove impediments to and perfect the mechanism of a free and open market because it would set forth in a single rule the requirements for pre-opening indications, thereby promoting transparency by using consistent terminology for rules governing equities trading and ensuring that members, regulators, and the public can more easily navigate the Exchange’s rulebook.

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

The Exchange believes that adopting new single-wide (5% change) and double-wide (10% change if S&P 500 futures move 2%) percentage parameters for the publication of pre-opening indications would remove impediments to and perfect the mechanism of a free and open market by requiring issuance of more pre-opening indications than currently during times of market stress, thereby increasing the amount of information available in the pre-market and improving the quality of price discovery at the opening. The proposed rule therefore promotes just and equitable principles of trade because it would expand the amount of pre-opening information available to the marketplace, thereby promoting transparency. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that amending Rule 123D to specify when a DMM may effect an opening electronically would remove impediments to and perfect the mechanism of a free and open market by promoting transparency in Exchange rules regarding under what circumstances a DMM may effect an opening electronically. The Exchange believes that the proposed parameters for when a DMM may open a security electronically, which would be 4% on regular trading days and doubled to 8% in times of market stress, would remove impediments to and perfect the mechanism of a free and open market by reducing the number of manual openings and enabling more securities to open closer to 9:30 a.m. ET on extremely volatile trading days, thereby providing customers and the investing public with greater certainty of a timely open in circumstances of extreme market stress. The Exchange further believes that the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that deleting Rule 48 and moving the applicable provisions to Rules 15 and 123D would remove impediments to and perfect the mechanism of a free and open market by reducing reliance on Rule 48 during extremely volatile trading days. Rather, as proposed, the need for the CEO of the Exchange to temporarily suspend either pre-opening indications or the need for prior Floor Official approval before opening or reopening a security would be under more narrow circumstances of when a Floor-wide event would impair the Exchange's ability to conduct a fair and orderly open or reopening. As discussed above, the proposed amendments to Rule 15 and 123D to provide for parameters on days with extreme market-wide volatility would obviate the need for the current Rule 48 ability to lift the requirements for pre-opening indications or prior Floor Official approval during extreme market-wide volatility. The Exchange further believes that the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that making corresponding conforming changes to Rules

80C, 124 and 9217 would remove impediments to and perfects the mechanism of a free and open market by reducing potential confusion and adding transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather promote greater efficiency and transparency at the open of trading on the Exchange.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSE-2016-24, Amendment No. 2)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Rules Relating to Pre-Opening Indications and Opening Procedures to Promote Greater Efficiency and Transparency at the Open of Trading on the Exchange

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 31, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. This Amendment No. 2 supersedes the original filing in its entirety. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. In particular, the Exchange proposes to:

- Make changes to the rules related to the pre-opening indication process by:
 - amending Rules 15 and 123D to consolidate the requirements for publication of pre-open indications in a single rule (Rule 15);
 - changing the conditions in which a Designated Market Maker (“DMM”) is required to publish a pre-opening indication in a security to an anticipated 5% move from a security’s reference price and, during extreme market-wide volatility, an anticipated 10% from a security’s reference price; and
 - providing for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications.

- Make changes to Rule 123D related to the opening process by:
 - incorporating all procedures relating to openings, other than pre-opening indications, in Rule 123D; and
 - Specifying that DMMs may effect an opening of a security electronically within specified percentage and volume parameters, which would be doubled during extreme market-wide volatility; and
 - providing for the CEO of the Exchange to temporarily suspend price and volume limitations for a DMM automated open or the requirement for prior Floor Approval before opening or reopening a security.
- Delete Rule 48
- Make conforming changes to Rules 80C, 124 and 9217.

The Exchange believes that the proposed changes will enhance transparency regarding the Exchange's opening process by specifying new parameters for how the opening at the Exchange would be effectuated on trading days experiencing extreme market-wide volatility, which would include both additional information before the open through the use of new parameters for pre-opening indications and expanded ability for DMMs to effectuate an opening electronically. The proposed rule changes are designed to preserve the Exchange's existing model, which values human touch when opening securities with significant price or volume disparity, while at the same time promoting automated measures to have as many securities open as close to 9:30 a.m. as feasible, even during extreme market-wide volatility.

Background

The Exchange’s current pre-opening procedures are outlined in Rules 15 (Pre-Opening Indications), 48 (Exemptive Relief – Extreme Market Volatility Condition), and 123D (Openings and Halts in Trading).

Rule 15(a) provides that if the opening transaction in a security will be at a price that represents a change of more than the “applicable price change” specified in the Rule,⁴ the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (“Rule 15 Indication”), which represents a price range in which a security is anticipated to open.

A Rule 15 Indication is published on the Exchange’s proprietary data feeds only and includes the security and the price range within which the DMM anticipates the opening transaction will occur, and would include any orally-represented Floor broker interest for the open. The applicable price ranges for determining whether to publish a Rule 15 Indication are based on five different price buckets and are expressed in dollar and percentage parameters:

Exchange Closing Price	Applicable Price Change (More Than)
Under \$20.00	\$0.50
\$20 – \$49.99	\$1.00

⁴ In current Rule 15, other than for certain American Depositary Receipts (“ADRs”), the “applicable price change” is measured from a security’s last reported sale price on the Exchange, the security’s offering price in the case of an initial public offering (“IPO”), or the security’s last reported sale price on the market from which it is being transferred. For an ADR where the trading day of the underlying security in the primary foreign market for the ADR concludes after the previous day’s trading in the US has ended, the “applicable price change” is measured from closing price of the primary foreign market. For an ADR where the primary foreign market on which the underlying security is open for trading at the time of the opening of the Exchange, the “applicable price change” is measured from parity with the last sale price of the underlying security.

\$50.00 - \$99.99	\$2.00
\$100 - \$500	\$5.00
Above \$500	1.5%

Rule 123D also mandates that pre-opening indications be published if the opening price would result in a significant price change from the previous close or if the opening is delayed past 10:00 a.m. Eastern Time (“Rule 123D Mandatory Indication”). The DMM is responsible for publishing the Rule 123D Mandatory Indication and, when determining the price range for the indication, takes into consideration Floor broker interest that has been orally entered and what, at a given time, the DMM anticipates the dealer participation in the opening transaction would be. Rule 123D Mandatory Indications are published to the Consolidated Tape and proprietary data feeds. The applicable price ranges for determining whether an opening price would be a “significant” price change requiring a Rule 123D Mandatory Indication are based on three price buckets and are expressed in a mixture of dollar (1 point = one dollar) and percentage parameters:

Previous NYSE Closing Price	Price Change (equal to or greater than)
Under \$10.00	1 point
\$10 – \$99.99	the lesser of 10% or 3 points
\$100 and Over	5 points

Rule 48 provides that a “qualified Exchange officer”⁵ can invoke an extreme market volatility condition at the open (or reopen of trading following a market-wide halt of securities) during which time the Exchange can suspend the requirements of Rules 15 and 123D, and in particular, the requirement to publish pre-opening indications. Rule 48

⁵ A “qualified Exchange officer” means the Chief Executive Officer of ICE, or his or her designee, or the Chief Regulatory Officer of the Exchange, or his or her designee.

is intended to be invoked only in those situations where the potential for extreme market volatility would likely impair Floor-wide operations at the Exchange by impeding the fair and orderly opening or reopening securities.⁶

Finally, Rule 123D, which in addition to setting forth requirements for certain pre-opening indications, also specifies procedures relating to openings, including that it is the responsibility of each DMM to ensure that securities open as close to the opening bell as possible and that securities can be opened on a trade or a quote. The rule further provides that openings may be effectuated manually or electronically.

Proposed Rule Change

The Exchange proposes to amend Rules 15, 48, and 123D to introduce greater efficiency and transparency into its opening process by, among other things, consolidating its rules regarding pre-opening indications into a single rule (Rule 15), introducing a new, single percentage parameter for the publication of pre-opening indications that would double on volatile trading days, and consolidating opening procedures into Rule 123D, including specifying parameters of when a DMM may effect an opening electronically, and consolidating the procedures of Rule 48 into Rules 15 and 123D, as applicable. The Exchange also proposes conforming changes to Rules 80C, 124 and 9217.

Pre-Opening Indications

The Exchange proposes to make changes to the pre-opening indication process. The Exchange would consolidate the requirements relating to pre-opening indications into Rule 15(a) – (f). Because the Exchange proposes all new rule text in Rule 15(a) - (f),

⁶ See Securities Exchange Act Release No. 56920 (December 6, 2007), 72 FR 70915 (December 13, 2007) (SR-NYSE-2007-111) (“Rule 48 Notice of Filing”).

the Exchange proposes to delete paragraphs (a) and (b) of current Rule 15, re-number Rule 15(c) as Rule 15(g), delete rule text in Rule 123D(b) relating to mandatory indications, and amend the title of Rule 15 to add the phrase “and Opening Order Imbalance Information” so that the rule would be titled “Pre-Opening Indications and Opening Order Imbalance Information.” In amending Rule 15, the Exchange would establish new conditions for when DMMs are required to publish pre-opening indications.

Proposed Rule 15(a), entitled “Pre-Opening Indications,” would provide that a pre-opening indication would include the security and the price range within which the opening price is anticipated to occur. This proposed rule text is based on the last clause of the first sentence of current Rule 15(a), which provides that a pre-opening indication includes the security and the price range within which the opening transaction is anticipated to occur. Proposed Rule 15(a) would further provide that a pre-opening indication would be published via the securities information processor (“SIP”) and proprietary data feeds. This proposed rule text is based on the way in which Rule 123D Mandatory Indications are currently published to both the SIP and proprietary data feeds. The Exchange proposes to use the term “securities information processor” instead of “Consolidated Tape” to use the term more commonly used in the industry.⁷

Proposed Rule 15(b), entitled “Conditions for Publishing a Pre-Open Indication,” would set forth the conditions in which a DMM is required to publish a pre-opening indication.

⁷ See, e.g., Supplementary Material .01 to Rule 19.

- Proposed Rule 15(b)(1) would provide that a DMM will publish a pre-opening indication before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range,” as defined in proposed Rule 15(d), from a specified “Reference Price,” as defined in proposed Rule 15(c), before the security opens. The procedures for publishing a pre-opening indication would be described in Rule 15(e). This proposed rule text is based on current Rule 15(a), which uses the term “applicable price range” and describes the reference prices used for purposes of current Rule 15(a). The Exchange proposes to define the “Reference Price” and “Applicable Price Range” in proposed Rules 15(c) and (d), described below. The requirement for DMMs to publish pre-opening indications is based on current Rule 15(a), which provides that the DMM shall issue a pre-opening indication if the conditions set forth in the rule are met.
- Proposed Rule 15(b)(2) would specify that when making a determination of what the opening transaction price would be, the DMM will take into consideration all interest eligible to participate in the opening transaction, including electronically-entered orders, the DMM’s own interest, and any interest represented orally in the crowd. This proposed rule text would be new and is designed to promote transparency in Exchange rules that all interest eligible to participate in the opening transaction is considered when publishing a pre-opening indication.

- Proposed Rule 15(b)(3) would provide that if a DMM is unable to publish a pre-opening indication for one or more securities due to a systems or technical issue, the Exchange may publish the pre-opening indication. This proposed rule text is based in part on current Rule 15(a), which provides that either the DMM or the Exchange shall publish a pre-opening indication. The Exchange proposes a substantive difference to provide that the Exchange “may” rather than “shall” publish a pre-opening indication. As set forth in current Rule 123D(a)(5), which was added after the applicable rule text in Rule 15(a),⁸ if a DMM is unavailable to open a security and the Exchange opens trading, the Exchange will not publish a pre-opening indication. Because the Exchange is not obligated to publish pre-opening indications in such scenario, the Exchange proposes to make Rule 15(b)(3) consistent with that rule.

Proposed Rule 15(c), entitled “Reference Price,” would provide in paragraph (1) that the Reference Price for a security (other than an American Depository Receipt (“ADR”)) for purposes of the proposed rule would be:

- the security's last reported sale price on the Exchange (proposed Rule 15(c)(1)(A));
- in the case of an IPO, the security's offering price (proposed Rule 15(c)(1)(B)); or
- the security's last reported sale price on the securities market from which

⁸ See Securities Exchange Act Release No. 76290 (Oct. 28, 2015), 80 FR 67822 (Nov. 3, 2015) (SR-NYSE-2015-49).

the security is being transferred to the Exchange, on the security's first day of trading on the Exchange (proposed Rule 15(c)(1)(C)).

This proposed rule text is based on current Rule 15(a).⁹

Proposed Rule 15(c)(2) would provide that the Reference Price for ADRs for purposes of the proposed rule would be:

- the closing price of the security underlying the ADR in the primary foreign market in such security when the trading day of the primary foreign market concludes (proposed Rule 15(c)(2)(A)); or
- based on parity with the last sale price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market is open for trading at the time of the opening on the Exchange (proposed Rule 15(c)(2)(B)).

This proposed rule text is based on current Rule 15(b), with non-substantive differences for clarity and to use the defined term “Reference Price” in the proposed rule text.¹⁰ Proposed Rule 15(c)(3) would further provide that the Reference Price for reopening a security following a halt would be the security’s last reported sale price on the Exchange. The Exchange proposes to specify the Reference Price for reopening following a halt because the Reference Price would be the same for all securities, including ADRs, which would be trading on the Exchange.

Proposed Rule 15(d) would set forth the Applicable Price Ranges for determining whether a DMM is required to disseminate a pre-opening indication. The Exchange

⁹ See supra note 4.

¹⁰ The seventh paragraph of Rule 123D(b), which the Exchange proposes to delete, similarly describes the reference price to be used for a foreign-listed security.

proposes to eliminate the current price buckets in Rules 15 and 123D and instead use a single percentage parameter as the Applicable Price Range for all securities, regardless of price of the security. As proposed, except during extreme market-wide volatility as set forth in proposed Rule 15(d)(2), a DMM would be required to publish a pre-opening indication if a security is expected to open at a price more than 5% away from the Reference Price. The Exchange believes that the proposed 5% parameter applicable to all securities would simplify and streamline the Exchange's rules regarding required pre-opening indications by having a single percentage parameter that would be applied across all securities, rather than having different price buckets and percentage parameter ranges to track. The Exchange further believes that the proposed single percentage parameter would result in a similar number of pre-opening indications as are currently published pursuant to Rule 123D, while at the same time simplifying the process for DMMs.

For example, using trade data for the month of October 2015, which was a month of relative trading stability and volumes, current Rule 123D Mandatory Indication parameters required indications for 15 securities on an average daily basis, which represents approximately 0.46% of the securities traded on the Exchange. Applying the proposed new percentage parameter of 5% to the same October 2015 trade data, DMMs would have been required, on average, to publish 33 pre-opening indications, which represents 1.01% of securities that trade on the Exchange. The Exchange believes that the incremental increase in number of pre-opening indications that would have been published pursuant to the proposed new single percentage parameter would promote transparency in the opening of securities at the Exchange.¹¹

¹¹ For purposes of this analysis, the Exchange compared the proposed new

Under current rules, the Exchange may suspend the requirement to publish pre-opening indications if a market-wide extreme market volatility condition is declared under Rule 48. This rule was adopted, in part, because of the manual nature of publishing pre-opening indications, and if DMMs were required to publish Rule 123D Mandatory Indications for multiple securities, it could delay the opening process and result in a large number of securities opening past 9:30 a.m. Eastern Time.¹² Historically, the Exchange has declared such a condition if, before the opening of trading, the E-mini S&P 500 Futures are plus or minus 2% from the prior day's closing price of the E-mini S&P 500 Futures. However, based on the events of the week of August 24, 2015, when the Exchange declared extreme market volatility conditions on August 24, 25, and 26, the Exchange appreciates that the absence of any pre-opening indications may leave a void in the information available for market participants to assess the price at which a security may open. Yet, because market-wide volatility would cause the price of most or all securities to move significantly away from the last sale price on the Exchange, the Exchange believes that the 5% price move appropriate for "normal" trading days would result in a DMM being required to disseminate more pre-opening indications than is feasible.

percentage parameters against only the current Rule 123D Mandatory Indications because these indications are more widely distributed via the SIP to market participants, and therefore more likely to be relied upon for purposes of assessing the opening price of a security on the Exchange. In addition, unlike Rule 15 Indications, a DMM is required to update Rule 123D Mandatory Indications, and thus this form of pre-opening indication is more likely to track to the actual opening price of a security.

¹² See Rule 48 Notice of Filing, supra note 6 at 70916.

Accordingly, the Exchange proposes to amend its rules to provide that on trading days with extreme market-wide volatility, the Applicable Price Range would be 10%, or double the Applicable Price Range on regular trading days. Specifically, proposed Rule 15(d)(2) would provide that, if as of 9:00 a.m. Eastern Time (“ET”), the E-mini S&P 500 Futures are plus or minus 2% from the prior day’s closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 80B, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM would be required to publish a pre-opening indication in a security if the price of that security is expected to open at a price more than 10% away from the Reference Price. By proposing to specify the conditions in which the Applicable Price Range would be 10%, the Exchange would promote transparency in Exchange rules so that market participants will know when the double-wide percentage parameter would be applied. Because the standard for extreme market-wide volatility would be specified in the rule, the Exchange would not need to provide separate notification on a trading day when the double-wide percentages would be applicable.

By proposing to specify in its rules that the Applicable Price Range would be 10%, rather than 5%, when the market is more volatile, the Exchange would require DMMs to disseminate pre-opening indications in those securities experiencing the greatest price movement. Under current rules, the Exchange’s only option when the overall market is volatile is to lift the requirement for pre-opening indications under Rule 48. The Exchange also proposes to use the 10% percentage parameter when reopening securities following a market-wide trading halt under Rule 80B. The Exchange believes that widening the parameters for pre-opening indications following a market-wide trading

halt would be appropriate because the reason for the trading halt was market-wide volatility, and thus the reopening of securities would face similar pricing pressure as circumstances when there is pre-opening extreme market-wide volatility. The Exchange also proposes that it would have the authority to use the 10% Applicable Price Range when it is necessary or appropriate for the maintenance of a fair and orderly market. For example, if the E-mini S&P 500 Futures were not plus or minus 2% as of 9:00 a.m., but moved to that level between 9:00 and 9:30, it may be appropriate, for the maintenance of a fair and orderly market, to use widened percentage parameters.

To determine the percentage parameter that would be appropriate for trading days with extreme market-wide volatility, the Exchange reviewed trading data from August 24, 25, and 26, 2015 and assessed how many Rule 123D Mandatory Indications would have been required under current rules, and how many pre-opening indications would have been required if a 5% and 10% percentage parameter were used on those days. Taking for example August 24, 2015, as set forth on Table 1 below, the data show that, had the Exchange not invoked Rule 48 lifting the requirement to publish Rule 123D Mandatory Indications, there would have been 638 securities (19% of securities) for which DMMs would have been required to publish Rule 123D Mandatory Indications. As set forth in Table 2 below, a 5% percentage parameter would have required 1,460 pre-opening indications (44% of securities) on August 24, 2015, more than twice as many as under the current parameters. As noted above, the Exchange believes that this would be too many pre-opening indications for DMMs to process on a trading day without impacting their ability to timely open their assigned securities.

By contrast, as set forth in Table 2 below, a 10% percentage parameter would have required pre-opening indications in 278 securities (8.4% of securities) on August 24, 2015. While this number is still higher than the number of pre-opening indications that would have been published on an average trading day in October using the 5% percentage parameter (see above), the Exchange believes that it strikes the appropriate balance between providing additional pre-opening information to investors and enabling the DMM’s to timely open their assigned securities. As set forth in more detail in Tables 1 and 2 below, August 24 represents an outlier, even for days when there has been extreme market-wide volatility. For other days in 2015 when the Exchange declared an extreme market-wide volatility under Rule 48, as set forth in Tables 1 and 2 below, applying a 10% parameter would not materially change the number of pre-opening indications being published.

Exchange Closing Price	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015			8/25/2015			8/26/2015			1/27/2015		
		Total # of Stocks	# Stocks over Price or Volume Parameter	% Over Total	Total # of Stocks	# Stocks over Price or Volume Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total
Under \$10.00	\$1	3284	2	0.06%	3293	17	0.52%	3293	2	0.06%	3294	4	0.12%	3295	0	0.00%
\$10.00-\$99.99	Less or 10% or \$3	3284	7	0.21%	3293	499	15.15%	3293	48	1.46%	3294	15	0.46%	3295	4	0.12%
\$100 or greater	\$5	3284	6	0.18%	3293	122	3.70%	3293	31	0.94%	3294	20	0.61%	3295	8	0.24%
Total			15	0.46%		638	19.37%		81	2.46%		39	1.18%		12	0.36%

Exchange Closing Price	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015			8/25/2015			8/26/2015			1/27/2015		
		Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total
If S&P 500 e-Mini Futures Change Less Than +/-2%	5%	3283	33	1.01%	3293	1460	44.34%	3293	255	7.74%	3294	67	2.03%	3295	17	0.52%
If S&P 500 e-Mini Futures Change Greater Than +/-2%	10%	3283	8	0.24%	3293	278	8.44%	3293	51	1.55%	3294	18	0.55%	3295	2	0.00%

Proposed Rule 15(e), entitled “Procedures for publishing a pre-opening indication,” would set forth proposed procedures a DMM would use when publishing a pre-opening indication. As discussed below, these procedures are based on existing procedures currently set forth in Rule 123D, with specified differences.

Proposed Rule 15(e)(1) would provide that publication of pre-opening indications requires the supervision and approval of a Floor Governor.¹³ This proposed rule change is based on the sixth paragraph of Rule 123D(b). The Exchange proposes a substantive change in that the proposed rule would require the supervision and approval of a Floor Governor, rather than supervision and approval of a Floor Official, as set forth in the current rule. The Exchange would also eliminate the requirement in Rule 123D that if a situation involves a bank or brokerage stock, the approval of an Executive Floor Governor is required, and if an Executive Floor Governor is unavailable, a Floor Governor or Senior Floor Governor's approval is required. The Exchange believes that requiring Floor Governor approval for all securities would involve the appropriate review by an experienced Floor official, while at the same time simplifying the approval process to require a single category of Floor Official to approve a pre-opening indication regardless of the type of security.¹⁴

Proposed Rule 15(e)(2) would provide that a pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication. Proposed Rule 15(e)(3) would further require that if a pre-opening indication is a spread wider than \$1.00, the DMM should undertake best efforts to publish an updated pre-opening indication of \$1.00 or less before opening the security, as may be

¹³ Rule 46 describes the different categories of Floor Officials, which are Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors, and Executive Floor Governors. Floor Governors are generally more senior members of the Trading Floor or qualified Exchange employees and are also empowered to perform any duty of a Floor Official.

¹⁴ The Exchange would also be deleting the 14th through 16th paragraphs of Rule 123D(b) regarding Floor Official approval for "tape indications," which are Rule 123D Mandatory Indications. The Exchange believes that proposed Rule 15(e)(1) simplifies the approval process and obviates the need for this Rule 123D rule text.

appropriate for the specific security. Proposed Rules 15(e)(2) and (e)(3) are based, in part, on the second and third bullet points following the ninth paragraph of Rule 123D(b),¹⁵ but with new rule text to simplify the requirements regarding updating pre-opening indications. With respect to proposed Rule 15(e)(3), for higher-priced securities, a pre-opening indication wider than \$1.00 may be appropriate and it may not be necessary to narrow such indication any further, particularly since Opening Imbalance Information pursuant to Rule 15(c) (proposed Rule 15(g)) would also be disseminated regarding the security.

Proposed Rule 15(e)(4) would provide that, after publication of a pre-opening indication, the DMM must wait for the following minimum specified periods before opening a security:

- Proposed Rule 15(e)(4)(A) would provide that, when using the 5% Applicable Price Range specified in proposed Rule 15(d)(1), a minimum of three minutes must elapse between publication of the first indication and a security's opening. The rule would further provide that, if more than one indication has been published, a security may be opened one minute after the last published indication provided that at least three minutes have elapsed from the dissemination of the first indication.

These first two sentences of proposed Rule 15(e)(4)(A) are based on rule

¹⁵ The second bullet following the ninth paragraph of Rule 123D(b) requires that the number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical. The third bullet provides for similar requirements following a non-regulatory halt, and specifically that a final indication with a one point (one dollar) spread would be appropriate.

text set forth in the twelfth and thirteenth paragraphs of current Rule 123D(b). Proposed Rule 15(e)(4)(A) would further provide that the DMM may open a security less than the required wait times after the publication of a pre-opening indication if the imbalance is paired off at a price within the Applicable Price Range. This proposed exception to the three-minute waiting requirement is new and is because the Exchange believes that, if equilibrium in price has been reached at a price within the Applicable Price Range, i.e., at a price that would not have required a pre-opening indication in the first instance, there is no reason to require the DMM to further delay the opening of the security in an effort to attract offsetting interest.

- Proposed Rule 15(e)(4)(B) would provide that, when using the 10% Applicable Price Range specified in Proposed Rule 15(d)(2), a minimum of one minute must elapse between publication of the first indication and a security's opening and that if more than one indication has been published, a security may be opened without waiting any additional time. As discussed above, proposed Rule 15(d)(2) would provide for new percentage parameters for trading days with extreme market-wide volatility. Based on the analysis of trade data for August 24, 2015, even with the new percentage parameters, there is the potential for 278 pre-opening indications to be required on an extremely volatile trading day. Because these pre-opening indications would be manually published by the DMM, the Exchange believes that eliminating additional wait times

would enable the DMMs to facilitate a speedy opening for a security that has been subject to a pre-opening indication on days with extreme market-wide volatility.

Proposed Rule 15(e)(5) would provide that, if trading is halted for a non-regulatory order imbalance, a pre-opening indication must be published as soon as practicable after the security is halted. This proposed rule text is based on the first sentence of the third bulleted paragraph following the ninth paragraph in Rule 123D(b), with a proposed substantive difference that a pre-opening indication should be published “as soon as practicable,” rather than “immediately,” after a security is halted. The Exchange believes that the proposed approach provides for more flexibility for the DMM to assess the order imbalance and publish a pre-opening indication that takes into consideration all applicable factors.

Proposed Rule 15(e)(6) would set forth the requirements for pre-opening indications when reopening a security following a trading pause under Rule 80C.¹⁶ Proposed Rule 15(e)(6)(A) would provide that a pre-opening indication may be published without prior Floor Governor approval. Proposed Rule 15(e)(6)(B) would provide that a pre-opening indication would not need to be updated before reopening the security, and the security may be reopened outside of any prior indication. Lastly, proposed Rule 15(e)(6)(C) would provide that the reopening is not subject to the minimum waiting time requirements in Proposed Rule 15(e)(4). Proposed Rules 15(e)(6)(A) – (C) are

¹⁶ Rule 80C sets forth the Exchange’s rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act known as the Limit Up/Limit Down (“LULD”) Plan.

based on Rule 80C(b)(2)(A), with non-substantive differences to use different rule text cross-references.

Proposed Rule 15(f), entitled “Temporary Suspension of Pre-Opening Indications,” would provide in proposed Rule 15(f)(1) that if the CEO of the Exchange determines that a Floor-wide event is likely to impact the ability of DMMs to arrange for a fair and orderly opening or reopening and that absent such relief, operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the requirement to publish pre-opening indications under Rule 15 prior to opening or reopening a security following a market-wide trading halt.¹⁷

Proposed Rule 15(f) is based in part on Rule 48, which provides that a qualified Exchange officer may declare an extreme market volatility condition and temporarily suspend the requirements for pre-opening indications.¹⁸ Because the Exchange would be specifying new percentage parameters for pre-opening indications on trading days with market-wide volatility, the Exchange does not believe that it needs Rule 48 in its current form. While the Exchange expects that its other proposed changes to DMMs’ requirements related to pre-opening indications will make it unlikely that a complete suspension of pre-opening indications would be required, the Exchange believes it would

¹⁷ Pursuant to Rule 1, the CEO of the Exchange may formally designate one or more qualified employees of Intercontinental Exchange, Inc. (“ICE”) to act in place of any person named in a rule as having authority to act under such rule in the event the named person in the rule is unavailable to administer that rule.

¹⁸ Rule 48(d) defines a “qualified Exchange officer” for purposes of Rule 48 as the CEO of ICE, or his or her designee, or the Chief Regulatory Officer (“CRO”) of the Exchange, or his or her designee. The Exchange proposes to streamline its rules to specify that only the CEO of the Exchange would have the authority to temporarily suspend the requirement for pre-opening indications. However, pursuant to Rule 1, the CEO could delegate this authority to other qualified ICE employees.

be prudent for the CEO of the Exchange to retain the authority to temporarily suspend the requirements to make pre-opening indications for events that it cannot currently predict. Accordingly, rather than refer to extreme market-wide volatility as in current Rule 48, proposed Rule 15(f)(1) would refer to a Floor-wide event that could impact the fair and orderly opening or reopening of securities more generally.

Proposed Rule 15(f)(2), which is based on Rule 48(c)(1)(A), would specify the range of factors that the CEO of the Exchange would be required to consider in making any determination to temporarily suspend the requirement for pre-opening indications.¹⁹ In addition, similar to Rule 48(c)(1)(B) and 48(c)(1)(C), proposed Rules 15(f)(2)(B) and (C) would require the CEO to consult with the CRO of the Exchange in making a determination under proposed Rule 15(f)(1) and inform Commission staff as promptly as practicable that pre-opening indications under Rule 15 have been temporarily suspended. Proposed Rule 15(f)(3), which is based on Rule 48(c)(4), would provide that a temporary suspension under Rule 15(f) would be in effect only for the trading day on which it was declared.²⁰ Finally, proposed Rule 15(f)(4) would provide that notwithstanding a temporary suspension of the requirement to publish pre-opening indications in a security under Rule 15, a DMM or the Exchange may publish a pre-opening indication for one or

¹⁹ As provided for in Rule 48(c)(1)(A), these factors include volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions.

²⁰ Rule 48(c)(4) provides that that a declaration of an extreme market volatility condition under Rule 48 shall be in effect only for the particular opening or reopen for the trading session on the particular day that the extreme market volatility condition if determined to exist.

more securities. This proposed rule text, which is based in part on Rule 48(c)(5), would allow a DMM or the Exchange to publish a pre-opening indication, even if the rule were suspended.²¹ Unlike Rule 48(c)(5), which specifies conditions when the DMM should still publish a pre-opening indication, proposed Rule 15(f)(3) would not require pre-opening indications, but rather, would allow them to be published even if the rule were temporarily suspended.

Because the Exchange has added new subsections to Rule 15, the Exchange proposes to renumber Rule 15(c) as Rule 15(g) and to add a header to this subsection of rule entitled “Opening Order Imbalance Information.” In addition to re-designating the rule from Rule 15(c) to Rule 15(g), the Exchange proposes non-substantive differences to re-number the subsections of proposed Rule 15(g) to use the same numbering convention as proposed for proposed Rule 15(a) – (f), delete the phrase “the provisions of” in proposed Rule 15(g)(2)(B), and remove the reference to subparagraph (b) by deleting the phrase “or (b).”

The Exchange also proposes a substantive difference to change Rule 15(c)(3)(iii) (re-numbered as proposed Rule 15(g)(3)(C)) to increase the frequency with which the Exchange disseminates Order Imbalance Information²² beginning at 9:20 a.m. ET.

²¹ Rule 48(c)(5) provides that a declaration of an extreme market volatility condition shall not relieve DMMs from the obligation to make pre-opening indications in situations where the opening of a security is delayed for reasons unrelated to the extreme market volatility condition.

²² Order Imbalance Information reflects real-time order imbalances that accumulate prior to the opening transaction on the Exchange and the price at which interest eligible to participate in the opening transaction may be executed in full. Order Imbalance Information disseminated pursuant to Rule 15(c) includes all interest eligible for execution in the opening transaction of the security in Exchange systems, i.e., electronic interest, including Floor broker electronic interest, entered into Exchange systems prior to the opening. Order Imbalance Information is

Currently, under Rule 15(c)(3)(iii), Order Imbalance Information is disseminated approximately every 15 seconds between 9:20 am ET and the opening of trading in that security. The Exchange proposes to disseminate Order Imbalance Information approximately every 5 seconds between 9:20 a.m. ET and the opening of trading in that security. The Exchange believes that increasing the frequency with which Order Imbalance Information is disseminated would provide market participants with additional updated pre-opening information, thus promoting transparency for the opening transaction.

Finally, the Exchange proposes to add new Supplementary Material .10 to Rule 15 providing that, unless otherwise specified in the proposed Rule,²³ references to an opening transaction include a reopening transaction following a trading halt or pause in a security. Currently, Rule 123D Mandatory Indications are required for both openings and reopenings. Because proposed Rule 15 indications would similarly be required for openings and reopenings following a halt or pause, the Exchange proposes to add Supplementary Material .10 to Rule 15.

DMM Automated Openings

As noted above, the process for publishing either Rule 15 Indications or Rule 123D Mandatory Indications is manual, and is generally followed by the DMM effecting the opening of a security manually rather than electronically. Consistent with this approach, the Exchange currently systemically blocks DMMs from opening a security

disseminated on the Exchange's proprietary data feeds. See Rule 15(c)(1).

²³ See, e.g., proposed Rules 15(d)(2) (referring only to reopenings following a market-wide trading halt under Rule 80B) and 15(e)(6) (specifying different procedures when reopening trading following a trading pause).

electronically if the opening price would be outside of price parameters that are based on the price buckets and applicable price ranges specified in Rule 15(a). The Exchange similarly blocks DMMs from electronically opening a security if size of the opening transaction would be a significant volume, which similarly would indicate the potential need for manual oversight of the opening process.

Because the DMM is not obligated to open a security electronically, the Exchange has not historically specified in its rules the parameters for when the DMM may effect an opening electronically.²⁴ However, following the events of the week of August 24, 2015, the Exchange believes that specifying in Exchange rules the conditions in which a DMM is permitted to open a security electronically would provide greater transparency in Exchange rules. The Exchange therefore proposes to amend Rule 123D(a) to specify when a DMM may effect an opening electronically.

In specifying parameters for when a DMM may effectuate an opening electronically, the Exchange proposes to adopt parameters and requirements that would be structured similarly to the proposed parameters for new Rule 15 pre-opening indications, as discussed above. To effect this change, the Exchange proposes new subsection numbering to Rule 123D(a)(1) to break out the third and fourth sentences of current Rule 123D(a)(1) to be proposed Rules 123D(a)(1)(A) and (B).²⁵ The Exchange proposes to add to proposed Rule 123D(a)(1)(B) that Exchange systems would not permit

²⁴ Rule 123D does not require DMMs to open a security electronically; a DMM may determine that in the particular circumstances for a security, manually opening the security may be warranted, even if the price would be within the Applicable Price Range. For example, if a Floor broker has represented an order in the Crowd, the DMM will open a security manually.

²⁵ The Exchange also proposes a non-substantive amendment to change the term “stock” to “security.”

a DMM to open a security electronically if a DMM has manually entered Floor interest. This is how Exchange systems currently function and is similar to Rule 123C.10 regarding when a DMM may close a security electronically.

The Exchange proposes to set forth the parameters for when a DMM may effect an opening electronically in new proposed Rules 123D(a)(1)(B)(i) and (ii):

- Proposed Rule 123D(a)(1)(B)(i) would provide that except under the conditions set forth in Rule 123D(a)(1)(B)(ii), a DMM may not effect an opening electronically if the opening transaction would be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e), or the matched volume for the opening transaction would be more than (a) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or (b) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter. For purposes of this Rule, the calendar quarters will be based on a January 1 to December 31 calendar year.
- Proposed Rule 123D(a)(1)(B)(ii) would provide that if as of 9:00 a.m. ET, the E-mini S&P 500 Futures are plus or minus 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM could effect an opening electronically if the opening transaction would be at a price of up to 8% away from the Official Closing Price, as defined in Proposed Rule 123C(1)(e), without

any volume limitations.

Similar to the new Applicable Price Ranges for pre-opening indications proposed in Rule 15(d) above, the Exchange proposes to use a single percentage parameter for all securities, regardless of price. The Exchange also proposes to double those percentage parameters on days with extreme market-wide volatility, and would use the same standard for determining whether there is market-wide volatility as is proposed in Rule 15(d)(2), described above. Because the Exchange continues to believe that, if a pre-opening indication has been published, a security is better served if a DMM effects a manual opening, the Exchange proposes to apply percentage parameters to DMM automated openings that are tighter than the requirements for publishing a pre-opening indication. In other words, if a pre-opening indication would be required under proposed Rule 15, the DMM would not be permitted to effect an opening electronically. To achieve this goal, the Exchange proposes that the percentage parameter on a regular trading day for DMM automated opens should be one percent lower than the percentage parameter for pre-opening indications on a regular trading day. And as with pre-opening indications, on a day with extreme market-wide volatility, the applicable percentage would be doubled.

The Exchange believes that the proposed conditions for when a DMM may effect an opening electronically would reduce the number of manual openings and enable more securities to open closer to 9:30 a.m. ET, both on regular trading days and on extremely volatile trading days such as August 24, 2015.

Tables 3 through 5 below illustrate how many securities would not be eligible for a DMM to effect an opening electronically when applying the current and proposed

percentage and volume parameters to trade data from October 2015 and trade data from August 24, 2015.

Table 3: Automated Open - Current Price and Volume Parameters												
Exchange Closing Price	Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)					8/24/15				
			Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter
Under \$20.00	100K	\$0.50	1228	29	2.4%	9	21	1300	546	42.0%	506	95
\$20-\$49.99	100K	\$1.00	991	30	3.0%	13	19	1139	649	57.0%	646	67
\$50.00-\$32000	100K	\$2.00	534	35	6.6%	17	19	560	485	86.8%	485	70
Above \$32000	100K	1.50%	1	0	0.0%	0	0	1	1	100.0%	1	0
Total			2754	94	3.4%	39	59	3000	1682	56.1%	1639	232

Table 4: Automated Open - New Price % and Volume Parameters												
Average Opening Volume in Previous Calendar Quarter	Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)					8/24/15				
			Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter
100,000 shares or less	150,000+ shares	4.00%	2680	41	1.5%	36	8	2924	1682	57.5%	1671	86
Over 100,000 shares	500,000+ shares	4.00%	74	6	8.1%	3	3	76	71	93.4%	71	33
		Total	2754	47	1.7%	39	11	3000	1753	58.4%	1742	119

Table 5: Automated Open - New Double Wide Price % if S&P 500 e-Mini Futures Change +/-2% From Prior Day's Close												
Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015							
		Total # of Stocks Opening on Trade	# Stocks over Price Parameter	% Over Total	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total					
none	8%	2754	11	0.4%	3000	573	19.1%					

For example, as set forth in Table 3, using current price parameters and a 100,000 share volume parameter, in October 2015, 94 securities (13.4% of securities) on average each day were not eligible to be opened by the DMM electronically. As demonstrated in Table 4, using the proposed 4% price and tiered volume parameters, a comparable 47 securities (1.7% of securities) on average in October would not have been eligible to be opened by the DMM electronically.

With respect to the proposed volume parameters, the Exchange believes that having a parameter tied to higher-than-average opening volume in a security would better reflect whether opening electronically would be appropriate. For example, as the data

show in Table 4, there were 74 securities averaging daily opening volume over 100,000 shares in the previous quarter (3Q15) and three of those securities had opening volume of over 500,000 shares on an average daily basis in October. The Exchange believes that if a security has a higher-than-average opening volume on a quarterly basis without any corresponding price dislocation, then the volume of shares trading on the opening for such securities is not representative of any volatility for that security, but rather, is a regular state of affairs that does not require a high-touch opening managed by a DMM on the trading Floor. Rather, such securities would benefit from being available for the DMM to open electronically in order to promote a fair and orderly opening at or near the open of trading.

As with pre-opening indications, the Exchange proposes to double the percentage parameter on trading days with extreme market-wide volatility and eliminate the volume parameter. As illustrated in Table 5, doubling the percentage parameter and eliminating the volume parameters would allow DMMs to open most securities electronically even during extreme market-wide volatility. As trade data from August 24, 2015 set forth in Table 3 illustrates, the current percentage parameters restricted DMMs from opening 1,753 securities electronically, which represents 58.4% of securities.²⁶ As set forth in Table 5, applying the proposed 8% percentage parameter would have allowed DMMs to open all but 573 securities electronically, which represents 19.1% of the securities traded on the Exchange.

The Exchange also proposes to add a new paragraph (c) to Rule 123D entitled “Temporary Suspension of DMM Automated Opening Limitations or Floor Official

²⁶ On August 24, 2015, DMMs also chose not to open securities electronically, even if they would have been priced within the current price parameters.

Approval.” Similar to proposed Rule 15(f), if the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the prohibition on a DMM opening a security electronically if the opening transaction would be more than the price or volume parameters specified in proposed Rule 123D(a)(1)(B). This would be a new suspension authority that relates to the proposed new price and volume parameters for when a DMM may open a security electronically. The Exchange believes that having this temporary suspension authority would be appropriate for situations if the DMM is unable to open a security manually, either due to unavailability of 11 Wall Street facilities or because of systems or technical issues with Floor-based tools for manually opening a security.

Proposed Rule 123D(c) would also provide that if the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange, and that absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend (i) the prohibition on a DMM opening a security electronically if the opening transaction will be more than the price or volume parameters specified in proposed Rule 123D(a)(1)(B); or (ii) the need under Rule 123D(b) for prior Floor Official approval to open or reopen a security following a market-wide trading halt. This proposed rule change is similar to authority in current Rule 48, which permits a qualified Exchange officer to temporarily suspend the need for prior Floor Official or prior NYSE Floor operations approval to open or reopen a

security following a market-wide trading halt. While the Exchange expects that its other proposed changes to Rule 123D would make it unlikely that a complete suspension of prior Floor Official approval would be required, the Exchange believes it would be prudent for the CEO of the Exchange to retain the authority temporarily suspend such requirements for events that it cannot currently predict. The Exchange also proposes a new temporary suspension that correlates to the proposed new price and volume parameters for when a DMM may open a security electronically. The Exchange expects that this relief would be required if 11 Wall Street facilities were unavailable and DMMs would be required to open all securities remotely, and thus electronically.

Proposed Rule 123D(c)(2) – (3) are nearly identical to proposed Rule 15(f)(1) – (3), as described in greater detail above, with changes only to address that this proposed rule relates to the temporary suspension of the requirements for specified paragraphs of Rule 123D. Proposed Rule 123D(c)(2) – (3) is based on the same provisions of Rule 48 that proposed Rule 15(f)(2) – (4) is based on, which is discussed in greater detail above.

The miscellaneous and technical amendments proposed to Rule 123D are as follows:

- The Exchange proposes to amend Rule 123D(a)(5) (Pre-Opening Information) to change the citation to Rule 15(c) to 15(g) based on the proposed changes to Rule 15, described above, and delete the word “either” and the references to Rule 123D.
- The Exchange proposes to delete the phrase “Halts in Trading” from the heading of Rule 123D(b).
- Also in Rule 123D(b), the Exchange proposes to delete the text relating to

the dissemination of mandatory indications beginning with the sentence “If an unusual situation exists, such as a large order imbalance, tape indications should be disseminated, including multiple indications if appropriate with the supervision of a Floor Official” through and including the sentence “An Executive Floor Governor or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.” This rule text all pertains to Rule 123D Mandatory indications, which, as discussed above, would be governed by proposed Rule 15.

- The Exchange proposes to add a new heading (c) entitled “Halts in Trading” before the sentence “Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials” in current Rule 123D(b) and change current headings (c) (Equipment Changeover) and (d) of Rule 123D to (d) and (e), respectively.
- Finally, in current Rule 123D(c) (Proposed Rule 123D(e)), to reflect that all information relating to pre-opening indications, including the Applicable Price Ranges and Reference Prices, are now described in Rule 15, the Exchange proposes to delete the phrase “a significant order imbalance (one which would result in a price change from the last sale of one point or more for stocks under \$10, the lesser of 10% or three points for \$10—\$99.99 and five points if \$100 or more—unless a Floor Governor deems circumstances warrant a lower parameter) develops” and

add the phrase “a pre-opening indication would be required to be published” in its place.

Rule 48

The Exchange proposes to delete Rule 48 in its entirety. As discussed above, the Exchange is proposing changes to Rules 15 and 123D that it believes will allow DMMs to publish pre-opening indications in a manageable number of securities, even on days of high volatility, which would promote transparency regarding opening prices at the Exchange. In addition, and as described above, the Exchange is incorporating into Rules 15 and 123D authority for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications, the pricing and volume limitations for a DMM to open a security electronically, and for a DMM to obtain Floor Official approval under Rule 123D(b) when opening or reopening a security, if the CEO of the Exchange determines that such relief is necessary to the ability of DMMs to open the securities and to the operation of the Exchange. Accordingly, the Exchange believes that the Rule 48 is no longer necessary.

Conforming and Technical Amendments – Rules 80C, 124 and 9217

Rule 80C

The Exchange proposes conforming amendments Rule 80C(b)(2), which governs a Trading Pause under the LULD Plan.

First, Rule 80C(b)(2) requires that the Exchange re-open the security in a manner similar to the procedures set forth in Rule 123D following a Trading Pause (as defined therein). The Exchange proposes to add a reference to Rule 15 to Rule 80C(b)(2), so that the requirement to re-open would be in a manner similar to Rules 15 and 123D.

Second, the Exchange proposes to delete subdivision (A) of Rule 80C(b)(2) in its entirety and mark the deleted text as “Reserved.” As noted above, the requirements for reopening a security following a trading pause set forth in Rule 80C would be codified in proposed Rule 15(d)(6).

Rule 124

The Exchange proposes to amend subsection (c)(1) of Rule 124 (Midday Auction), describing the reopening process for the Midday Auction in the same manner as in Rule 123D for reopenings, by adding “pre-opening” before the word “indication” in four places and deleting the reference “to the Consolidated Tape” in the first sentence.

Rule 9217

The Exchange also proposes to amend Rule 9217, which sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as set forth in Rule 9216(b). Rule 9217 permits a summary fine for violations of Rule 123D requirements for DMMs relating to openings, reopenings, delayed openings, trading halts, and tape indications. The Exchange proposes to delete the clause “tape indications” to reflect elimination of mandatory indications from Rule 123D. The Exchange believes this proposed change would add transparency and clarity to the Exchange’s rules.

Because of the technology changes associated with the proposed rule change, the Exchange will announce by Trader Update the implementation date of the changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section

6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that streamlining and consolidating pre-opening indications into a single rule (Rule 15) from two (Rules 15 and 123D) would remove impediments to and perfect the mechanism of a free and open market because it would set forth in a single rule the requirements for pre-opening indications, thereby promoting transparency by using consistent terminology for rules governing equities trading and ensuring that members, regulators, and the public can more easily navigate the Exchange's rulebook.

The Exchange believes that adopting new single-wide (5% change) and double-wide (10% change if S&P 500 futures move 2%) percentage parameters for the publication of pre-opening indications would remove impediments to and perfect the mechanism of a free and open market by requiring issuance of more pre-opening indications than currently during times of market stress, thereby increasing the amount of information available in the pre-market and improving the quality of price discovery at the opening. The proposed rule therefore promotes just and equitable principles of trade because it would expand the amount of pre-opening information available to the marketplace, thereby promoting transparency. For the same reasons, the proposal is also

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

designed to protect investors as well as the public interest.

The Exchange believes that amending Rule 123D to specify when a DMM may effect an opening electronically would remove impediments to and perfect the mechanism of a free and open market by promoting transparency in Exchange rules regarding under what circumstances a DMM may effect an opening electronically. The Exchange believes that the proposed parameters for when a DMM may open a security electronically, which would be 4% on regular trading days and doubled to 8% in times of market stress, would remove impediments to and perfect the mechanism of a free and open market by reducing the number of manual openings and enabling more securities to open closer to 9:30 a.m. ET on extremely volatile trading days, thereby providing customers and the investing public with greater certainty of a timely open in circumstances of extreme market stress. The Exchange further believes that the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that deleting Rule 48 and moving the applicable provisions to Rules 15 and 123D would remove impediments to and perfect the mechanism of a free and open market by reducing reliance on Rule 48 during extremely volatile trading days. Rather, as proposed, the need for the CEO of the Exchange to temporarily suspend either pre-opening indications or the need for prior Floor Official approval before opening or reopening a security would be under more narrow circumstances of when a Floor-wide event would impair the Exchange's ability to conduct a fair and orderly open or reopening. As discussed above, the proposed

amendments to Rule 15 and 123D to provide for parameters on days with extreme market-wide volatility would obviate the need for the current Rule 48 ability to lift the requirements for pre-opening indications or prior Floor Official approval during extreme market-wide volatility. The Exchange further believes that the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that making corresponding conforming changes to Rules 80C, 124 and 9217 would remove impediments to and perfects the mechanism of a free and open market by reducing potential confusion and adding transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather promote greater efficiency and transparency at the open of trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register

or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2016-24 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2016-24. This file number should be included on the subject line if e-mail 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2016-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).

Addition: Underlined
Deletions: [Bracketed]

Rules of New York Stock Exchange LLC

Rule 15. Pre-Opening Indications and Opening Order Imbalance Information

(a) Pre-Opening Indications: A pre-opening indication will include the security and the price range within which the opening price is anticipated to occur. A pre-opening indication will be published via the securities information processor and proprietary data feeds.

(b) Conditions for publishing a pre-opening indication:

- (1) A DMM will publish a pre-opening indication, as described in paragraph (e), before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the "Applicable Price Range," as specified in paragraph (d) of this Rule, from a specified "Reference Price," as specified in paragraph (c) of this Rule, before the security opens.
- (2) When making the determination of what the opening transaction price will be, the DMM will take into consideration all interest eligible to participate in the opening transaction, including electronically-entered orders, the DMM's own interest, and any interest represented orally in the Crowd.
- (3) If a DMM is unable to publish a pre-opening indication for one or more securities due to a systems or technical issue, the Exchange may publish a pre-opening indication for that security(ies).

(c) Reference Price.

- (1) The Reference Price for a security, other than an American Depositary Receipt ("ADR"), will be:
 - (A) the security's last reported sale price on the Exchange;
 - (B) the security's offering price in the case of an initial public offering ("IPO"); or
 - (C) the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange ("transferred security").

(2) The Reference Price for an ADR will be:

(A) the closing price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market concludes after trading on the Exchange for the previous day has ended; or

(B) based on parity with the last sale price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market is open for trading at the time of the opening on the Exchange.

(3) The Reference Price for reopening a security following a halt will be the security's last reported sale price on the Exchange.

(d) Applicable Price Range:

(1) Except under the conditions set forth in paragraph (d)(2) of this Rule, the Applicable Price Range for determining whether to publish a pre-opening indication will be 5%.

(2) If as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 80B, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, the Applicable Price Range for determining whether to publish a pre-opening indication will be 10%.

(e) Procedures for publishing a pre-opening indication: The DMM will use the following procedures when publishing a pre-opening indication.

(1) Publication of a pre-opening indication requires the supervision and approval of a Floor Governor.

(2) A pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication.

(3) If the pre-opening indication is a spread wider than \$1.00, the DMM should undertake best efforts to publish an updated pre-opening indication of \$1.00 or less before opening the security, as may be appropriate for the specific security.

(4) After publishing a pre-opening indication, the DMM must wait for the following minimum specified periods before opening a security:

(A) When using the Applicable Price Range specified in paragraph (d)(1) of this Rule, a minimum of three minutes must elapse between publication of the first indication and a security's opening. If more than one indication has been published, a security may be opened one minute after the last published indication provided that at least three minutes have elapsed from the dissemination of the

first indication. However, the DMM may open a security less than the required minimum times after the publication of a pre-opening indication if the imbalance is paired off at a price within the Applicable Price Range.

(B) When using the Applicable Price Range specified in paragraph (d)(2) of this Rule, a minimum of one minute must elapse between publication of the first indication and a security's opening. If more than one indication has been published, a security may be opened without waiting any additional time.

(5) If trading is halted for a non-regulatory order imbalance, a pre-opening indication must be published as soon as practicable after the security is halted.

(6) When reopening a security following a trading pause under Rule 80C:

(A) a pre-opening indication may be published without prior Floor Governor approval;

(B) a pre-opening indication does not need to be updated before reopening the security, and the security may be reopened outside of any prior indication; and

(C) the reopening is not subject to the minimum waiting time requirements in paragraph (e)(4) of this Rule.

(f) *Temporary Suspension of Pre-Opening Indications:*

(1) If the CEO of the Exchange determines that a Floor-wide event is likely to impact the ability of DMMs to arrange for a fair and orderly opening or reopening on that trading day and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the requirement to publish pre-opening indications in a security under Rule 15 prior to opening or reopening a security following a market-wide trading halt.

(2) In determining whether to temporarily suspend the need for pre-opening indications under Rule 15, the CEO of the Exchange will:

(A) consider the facts and circumstances that are likely to have Floor-wide impact for a particular trading session, including volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions;

(B) consult with the Chief Regulatory Officer of the Exchange; and

(C) inform the Securities and Exchange Commission staff as promptly as practicable that pre-opening indications under Rule 15 have been temporarily suspended.

(3) A temporary suspension under this Rule will be in effect only for the trading day on which it was declared.

(4) Notwithstanding a temporary suspension of the requirement to publish pre-opening indications in a security under Rule 15, a DMM or the Exchange may publish a pre-opening indication for one or more securities.

[(a) If the opening transaction on the Exchange is anticipated to be at a price that represents a change from: (1) the security's last reported sale price on the Exchange (except as described in section (b) below), (2) the security's offering price in the case of an initial public offering ("IPO"), or (3) the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange ("transferred security"), of more than the "applicable price change" (as defined below), the DMM or the Exchange shall issue a pre-opening indication, which includes the security and the price range within which the opening transaction is anticipated to occur. The "applicable price changes" are:

Exchange Closing Price	Applicable Price Change (More Than)
Under \$20.00	\$0.50
\$20 - \$49.99	\$1.00
\$50.00 - \$99.99	\$2.00
\$100 - \$500	\$5.00
Above \$500	1.5%

If a DMM issues a pre-opening indication or a mandatory indication pursuant to Rule 123D(1), the Exchange shall not publish a pre-opening indication in that security.

(b) American Depositary Receipts ("ADR")

(1) Where the trading day of the underlying security in the primary foreign market for the ADR concludes after trading on the NYSE for the previous day has ended, the Exchange DMM, in arranging an opening transaction on the Exchange pursuant to section (a) above, shall use the closing price of the primary foreign market to determine whether the price of such opening transaction represents a change of more than the "applicable price change."

(2) Where the primary foreign market on which the underlying security is open for trading at the time of the opening on the Exchange, pre-opening indications shall be based on a change from parity with the last sale price of the underlying security.]

[(c)] (g) Opening Order Imbalance Information: Exchange systems may also make available, from time to time, as the Exchange shall determine, Order Imbalance Information prior to the opening of a security on the Exchange.

(1) Order Imbalance Information disseminated by Exchange systems prior to the opening transaction is the data feed disseminated by Exchange systems of real-time order imbalances that accumulate prior to the opening transaction on the Exchange and the price at which interest eligible to participate in the opening transaction may be executed in full. Such Order Imbalance Information includes all interest eligible for execution in the opening transaction of the security in Exchange systems.

(2)[(i)] (A) Order Imbalance Information will use the last reported sale price in the security on the Exchange as the reference price to indicate the number of shares required to open the security with an equal number of shares on the buy side and the sell side of the market.

[(ii)](B) If a pre-opening indication is published pursuant to [the provisions of] subparagraph[s] (a) [or (b)] above, the reference price for the Order Imbalance Information will be as follows:

[(A)](i) If the bid price of the pre-opening indication of interest is higher than the last reported sale price for the security on the Exchange, the pre-opening indication bid price will serve as the reference price.

[(B)](ii) If the offer price of the pre-opening indication of interest is lower than the last reported sale price for the security on the Exchange, the pre-opening indication offer price will serve as the reference price.

[(C)](iii) If the last reported sale price on the Exchange falls within the bid and offer of the pre-opening indication of interest for a security, the last sale price shall serve as the reference price.

[(D)](iv) If the security is a transferred security, the last reported sale price on the securities market from which the security was transferred prior to its first day of trading on the Exchange will serve as the reference price.

(3) Order Imbalance Information disseminated prior to the opening of the security will be disseminated as follows:

[(i)](A) Approximately every five minutes between 8:30 am Eastern Time ("ET") and 9:00 am ET.

[(ii)](B) Approximately every minute between 9:00 am ET and 9:20 am ET.

[(iii)](C) Approximately every [15] 5 seconds between 9:20 am ET and the opening of trading in that security.

Supplementary Material:

.10 Unless otherwise specified in this Rule, references to an opening transaction include a reopening transaction following a trading halt or pause in a security.

[Rule 48. Exemptive Relief — Extreme Market Volatility Condition

(a) In the event that extremely high market volatility is likely to have a Floor-wide impact on the ability of DMMs to arrange for the fair and orderly opening, reopening following a market-wide halt of trading at the Exchange, or closing of trading at the Exchange and that absent relief, the operation of the Exchange is likely to be impaired, a qualified Exchange officer may declare an extreme market volatility condition with respect to trading on or through the facilities of the Exchange.

(b) In the event that an extreme market volatility condition is declared with respect to trading on or through the facilities of the Exchange, a qualified Exchange officer shall be empowered to temporarily suspend at the opening of trading or reopening of trading following a market-wide trading halt: (i) the need for prior Floor Official or prior NYSE Floor operations approval to open or reopen a security at the Exchange (Rules 123D(1); and/or (ii) applicable requirements to make pre-opening indications in a security (Rules 15 and 123D(1)).

(c) A suspension under section (b) of this Rule is subject to the following provisions:

(1) (A) Before declaring an extreme market volatility condition, the qualified Exchange officer shall consider the facts and circumstances that are likely to have Floor-wide impact for a particular trading session, including volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions.

(B) Such review shall be undertaken in consultation with relevant Exchange regulatory and market operational employees that are officers of the Exchange, as appropriate. Following the review, the qualified Exchange officer or his or her designee shall document the basis for declaring an extreme market volatility condition.

(2) The qualified Exchange officer will, as promptly as practicable in the circumstances, inform the Securities and Exchange Commission staff that an

extreme market volatility condition has been declared, the basis for such declaration, and what relief has been granted.

- (3) An extreme market volatility condition may only be declared before the scheduled opening or reopening following a market-wide halt of securities at the Exchange.
- (4) A declaration of an extreme market volatility condition shall be in effect only for the particular opening or reopening for the trading session on the particular day that the extreme market volatility condition is determined to exist. The Exchange may declare a separate extreme market volatility condition on subsequent days subject to sections (b)(1) through (b)(3) above.
- (5) A declaration of extreme market volatility shall not relieve DMMs from the obligation to make pre-opening indications in situations where the opening of a security is delayed for reasons unrelated to the extreme market volatility condition.

(d) For purposes of this Rule, a "qualified Exchange officer" means the Chief Executive Officer of ICE, or his or her designee, or the Chief Regulatory Officer of the Exchange, or his or her designee.]

Rule 80C. Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

(b) Trading Pause. During Phase 1 of the Plan, a Trading Pause in Tier 1 NMS Stocks subject to the requirements of the Plan, shall be subject to Plan requirements and paragraph (b)(2) of this Rule; a Trading Pause in Tier 1 NMS Stocks not yet subject to the requirements of the Plan shall be subject to the requirements in paragraphs (b)(1) - (5) of this Rule; and a Trading Pause in Tier 2 NMS Stocks shall be subject to the requirements set forth in paragraphs (b)(1)(B) - (5) of this Rule. Once the Plan has been fully implemented and all NMS Stocks are subject to the Plan, a Trading Pause under the Plan shall be subject to paragraph (b)(2) of this Rule only.

- (2) Re-opening of Trading following a Trading Pause. At the end of the Trading Pause, the Exchange shall re-open the security in a manner similar to the procedures set forth in Rules 15 and 123D, subject to the following:
 - (A) [Indications may be published during a Trading Pause. Prior Floor Official approval is not required before publishing an indication. If an indication is published, it does not need to be updated before reopening the security and the security may be reopened outside of any prior indication. Any re-openings following

a Trading Pause are not subject to the requirements that (i) a minimum of three minutes must elapse between the first indication and a security's re-opening, or (ii) if more than one indication is published, a minimum of one minute must elapse before a security's re-opening;] Reserved

Rule 123D. Openings and Halts in Trading

(a) Openings.

(1) It is the responsibility of each DMM to ensure that registered [stocks] securities open as close to the opening bell as possible, while at the same time not unduly hasty, particularly when at a price disparity from the prior close.

(A) DMMs may open a registered [stock] security on a trade or on a quote. A DMM may open a registered [stock] security on a quote when there is no opening trade.

(B) Openings may be effectuated manually or electronically (see Rule 104(b)(ii)). Exchange systems will not permit a DMM to open a security electronically if a DMM has manually entered Floor interest.

(i) Except under the conditions set forth in paragraph (a)(1)(B)(ii) of this Rule, a DMM may not effect an opening electronically if the opening transaction will be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e), or the matched volume for the opening transaction will be more than:

(a) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or

(b) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter.

(ii) If as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM may effect an opening electronically if the opening transaction will be at a price of up to 8% away from the Official Closing Price, as defined in Rule 123C(1)(e), without any volume limitations.

(2) If a DMM cannot facilitate the open of trading for one or more securities for which the DMM is registered as required by Exchange rules, the Exchange will open those securities electronically on a trade or a quote as provided for in paragraphs (a)(3) – (a)(6) of this Rule. Manually-entered Floor interest will not participate in any opening effectuated electronically by the Exchange and if previously entered, will be

ignored. Unless otherwise specified, references to an open or opening in paragraphs (a)(3) – (a)(6) of this Rule also mean a reopening following a trading halt or pause.

(3) **Opening on a Trade:** The Exchange will open a security on a trade if there is buy and sell interest that can trade a round lot or more at a price that is no greater than or no less than a specified range (“Opening Price Range”) away from the last sale price on the Exchange (“Reference Price”). The Exchange will determine the Opening Price Range and the Reference Price parameters from time to time and will provide advance notice to market participants.

(A) If all interest guaranteed to participate in an opening trade under Rule 115A(b) can trade at a price consistent with the Opening Price Range, the opening trade will be at the price at which all such interest can trade.

(B) If there are only Market Orders on both sides of the market, the opening price will be the Reference Price.

(C) If interest that is otherwise guaranteed to participate in an opening trade under Rule 115A(b) would cause an opening price to be outside the Opening Price Range, such interest is not guaranteed to participate in the opening trade. In such case, the opening trade will be at the price at which the maximum volume of shares is tradable that is closest to the Reference Price and orders will be allocated in the following priority:

(i) Market and MOO Orders will trade first in time priority, provided that, during a Short Sale Period, sell short Market Orders and MOO Orders will be adjusted to a Permitted Price and will be considered Limit Orders for purposes of determining allocation priority.

(ii) Stop Orders that would be elected based on the opening price will trade second in time priority, provided that, during a Short Sale Period, sell short Stop Orders that are priced to a Permitted Price that is lower than the opening price will trade after all other Stop Orders and before all other interest priced equal to or lower than the opening price.

(iii) Limit Orders (including Reserve Orders) to buy (sell) and e-Quotes (including Reserve e-Quotes) to buy (sell) priced higher (lower) than the opening price will trade third on parity by agent under Rule 72(c).

(iv) G-quotes to buy (sell) priced higher (lower) than the opening price will trade fourth on parity by agent under Rule 72(c).

(v) All other limit interest that is priced equal to the opening price will trade last and be allocated consistent with Rule 115A(b)(1).

(4) **Opening on a Quote:** The Exchange will open a security on a quote under the following circumstances:

(A) If interest of less than a round lot pairs off at a price within the Opening Price Range. After opening on a quote, such interest will trade at the price closest to

the Reference Price (or at the Reference Price if the only interest is Market Orders), but will not be reported as an opening trade.

(B) If interest of any size pairs off at a price below (above) the lower (upper) boundary of the Opening Price Range. Such paired-off interest will not trade.

(C) If there is no interest that can be quoted on either or both sides of the market. An opening quote that has a zero bid and/or a zero offer is not an “Opening Price” for purposes of the Regulation NMS Plan to Address Extraordinary Market Volatility (See Rule 80C).

(5) **Pre-Opening Information:** When the Exchange facilitates the opening of a security, it will publish Order Imbalance Information pursuant to Rule 15(g)(c), but will not issue pre-opening indications pursuant to [either] Rule 15(a) [or 123D], provided that the Exchange will publish pre-opening indications pursuant to Rule 15(a) [123D] for a re-opening following a regulatory halt.

(6) **Cancellation of Orders:** The Exchange will cancel orders after opening on a trade or quote as follows:

(A) All unexecuted Market Orders, MOO Orders, and LOO Orders will be cancelled.

(B) After an opening on a trade, buy (sell) Limit Orders priced higher (lower) than the opening price will be cancelled.

(C) If interest would have paired off at a price below (above) the lower (upper) boundary of the Opening Price Range, after opening on a quote, sell (buy) Limit Orders will be cancelled.

(b) Delayed Openings[/Halts in Trading]. Openings and reopenings should be timely, as well as fair and orderly, reflecting a professional assessment of market conditions at the time, and appropriate consideration of the balance of supply and demand as reflected by orders represented in the market. DMMs should, to the best of their ability, provide timely and impartial information at all phases of the opening process. DMMs should ensure adequate personnel are assigned and call upon additional clerical and relief DMM resources to assist in order management and Crowd communication, when appropriate. It is also incumbent upon DMMs to seek the advice of Floor Officials when openings are delayed or when a halt in trading may be appropriate due to unusual market conditions.

Brokers should recognize the difficulty in providing accurate information in a constantly changing situation, and that significant changes are often occasioned by single orders or substantial interests delivered via Exchange systems. Brokers should make every effort to ascertain the client's interest as early as possible and to inform the DMM so that such interest can be factored into the opening process. Brokers should communicate to clients the problems caused by delaying their interest until the last minute. Brokers should expect to have time to communicate the essential facts to their clients and to react to the

changing picture. They should not expect, however, to be able to delay the opening for every last fragment of this change, and should recognize their obligation to a timely opening. Once a relatively narrow range of opening possibilities is given, the broker and his or her client should have sufficient information to enter a final order. In this regard, brokers should advise their clients against limits which are not firm, or are based solely on where the opening looked at the time the information was given. Brokers should not expect to be given endless opportunities to adjust those limits. Whenever possible the broker should have discretion within a range of the client's interest, and have the power to react to last minute changes without having to go back to the phone. This is particularly true for orders in amounts that represent a small fraction of the total opening volume, but applies to all orders. Brokers must recognize that orders or cancellations merely dropped on the counter can be lost or misplaced, and should hand the order directly to the DMM or his or her assistant and orally state the terms. Failure to do so could result in a monetary error to the broker as well as the DMM.

Floor Officials participate in the regulatory process by providing an impartial professional assessment of unusual situations, as well as advice with respect to pricing when a significant disparity in supply and demand exists. The DMM, however, has ultimate responsibility in this regard, and while a Floor Official's approval may be a mitigating factor, it will not exonerate a DMM when performance has been deemed not satisfactory.

A DMM should consider the following areas of DMM performance when involved in an unusual market situation:

- an opening price change that is not in proportion to the size of an imbalance;
- absence of an indication before a large opening price change;
- inadequate support after a large opening price change, i.e., lack of sufficient continuity and depth in the aftermarket;
- absence of trading without good cause or Floor Official approval (or an unjustified or unreasonably delayed opening or halt in trading);
- not obtaining appropriate Floor Official approvals for opening delays, trading halts, and wide price variations.

In addition, a Floor Official should be consulted as soon as it becomes apparent that an unusual situation exists, and a Floor Governor should be consulted if it is anticipated that the opening price may be at a significant disparity from the prior close.

[If an unusual situation exists, such as a large order imbalance, tape indications should be disseminated, including multiple indications if appropriate with the supervision of a Floor Official. A second Floor Official's opinion in a delayed opening is required if there is difficulty in arriving at a decision; if the size of the price change from the previous NYSE

close is three points or more or represents a 10% change in price; or if the stock has not opened within 50 minutes after the opening of business or 20 minutes after an extended delayed opening time frame. All tape indications require Floor Official approval.

Exchange policy requires the dissemination of an indication in connection with any delayed opening — involving any stock which has not opened (or been quoted) by 10:00 a.m. In addition, the dissemination of an indication is mandatory for an opening which will result in a significant price change from the previous close:

Previous NYSE Closing Price *	Price Change (equal or greater than)
Under \$10	1 point
\$10-\$99.99	the lesser of 10% or 3 points
\$100 and Over	5 points

*The above guidelines are applicable to Initial Public Offerings based on the offering price.

All indications require the supervision and approval of a Floor Official. If it involves a bank or brokerage stock, the approval of an Executive Floor Governor is required. If an Executive Floor Governor is unavailable, a Floor Governor's or Senior Floor Official's approval must be obtained. In addition to the mandatory criteria, DMMs should use their judgment as to when it is appropriate to seek Floor Official approval for disseminating a price indication.

Mandatory indication policy applies to a foreign-listed security only if the opening price will be at a significant price change (see chart above) from its closing price in the foreign market or the current price in the foreign market.

Mandatory indications for convertible preferred stocks are only required if an indication was disseminated in the underlying common stock.

In this regard the following procedures should be followed for delayed opening and trading halt indications:

- The length of time for the dissemination of indications should be in proportion to the anticipated disparity of the opening or reopening price from the prior sale.
- The number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical.
- An indication should be published immediately when trading is halted for a non-regulatory order imbalance. Such indications should be broad enough to allow flexibility, but narrow enough to convey as accurate a picture of supply and demand

as possible at the time. In most cases, a final indication with a one point spread would be appropriate. Further telescoping to one-half point could result in unnecessary delay due to a change in the terms of a pivotal order. Even if an indication is not disseminated, DMMs should endeavor to provide brokers with an approximate range within which they believe a stock will open.

- Tape indications before the opening should be disseminated at 9:15 a.m., if possible, but any tape indications disseminated prior to 9:30 a.m. require the approval of an Executive Floor Governor or Floor Governor, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day.
- Tape indications and halts in trading in NYSE BondsSM are set forth in Rule 86.

As with other openings, tape indications are discretionary for IPO's with the approval of an Executive Floor Governor or Floor Governor except that it is mandatory if the opening price change as measured from the offering price meets the requirements for a mandatory indication.

If an indication is disseminated after the opening bell, it must be considered a delayed opening. In addition, any stock that is not opened with a trade or reasonable quotation within 30 minutes after the opening of business must be considered a delayed opening (except for IPO's) and requires Floor Official supervision, as well as an indication. That 30-minute time frame may only be extended by an Executive Floor Governor on a Floor-wide basis.

More than one indication should be disseminated if an opening will be outside the first indication or if the first indication had a wide spread, especially if the time frame for delayed openings has been extended by the Executive Floor Governor. A reduction in time between indications can be used when multiple indications are disseminated. Generally, a minimum of three minutes must elapse between the first indication and a stock's opening as measured by the time the indication appears on the PDU. However, when more than one indication is disseminated, a stock may open one minute after the last indication provided that at least three minutes must have elapsed from the dissemination of the first indication.

With respect to a post-opening trading halt, a minimum of three minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open one minute after the last indication, provided that at least three minutes must have elapsed from the dissemination of the first indication.

Tape indications must be disseminated with the approval of a Floor Official prior to the opening or reopening in a stock subject to a regulatory or nonregulatory halt in trading or a delayed opening. A Floor Governor should be consulted if a significant price change is anticipated.

An Executive Floor Governor or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.]

Floor Governors should keep apprised of developments when consulted, and should seek the assistance of Executive Floor Governors, when appropriate, as soon as possible.

Floor Governors should be prepared to balance the opportunity for brokers to participate in the opening with the need for timeliness, and should assist in identifying opportunities for opening the security, based upon the shifting supply and demand in conjunction with appropriate DMM participation.

DMMs should make every effort to balance timeliness with the opportunity for customer reaction and participation. Although the correct price based on information available at the time is always the goal, DMMs and supervising Floor Governors should recognize customers' desires for a timely opening. When the DMM and Floor Governor agree that all participants have had a reasonable opportunity to participate, the DMM should open the stock.

(c) Temporary Suspension of DMM Automated Opening Limitations or Floor Official Approval.

(1) If the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend:

(A) the prohibition on a DMM opening a security electronically if the opening transaction will be more than the price or volume parameters specified in paragraph (a)(1)(B) of this Rule; or

(B) the need under paragraph (b) of this Rule, for prior Floor Official approval to open or reopen a security following a market-wide trading halt.

(2) In determining whether to temporarily suspend the specified paragraphs of Rule 123D, the CEO of the Exchange will:

(A) consider the facts and circumstances that are likely to have Floor-wide impact for a particular trading session, including volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions;

(B) consult with the Chief Regulatory Officer of the Exchange; and

(C) inform the Securities and Exchange Commission staff as promptly as practicable of the temporary suspension.

(3) A temporary suspension under this Rule will be in effect for the trading day on which it was declared only.

(d) Halts in Trading. Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials. An Executive Floor Governor, or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the company's financial viability.

Sometimes the Exchange is notified by a listed company in advance of publication concerning news which might have a substantial market impact. The designated Exchange staff will advise an Executive Floor Governor or Floor Governor, or in their absence a Floor Official.

If the Exchange staff makes a recommendation that trading should be halted in a stock pending a public announcement by the company and the Executive Floor Governor or Floor Governor disagrees, he or she should seek the opinion of another Executive Floor Governor or Floor Governor. If the Executive Floor Governors or Floor Governors are in agreement that trading should not be halted, trading should continue. If one of the two is in agreement with the recommendation to halt trading, then trading should be halted. While the time period may vary from case-to-case as a result of the particular circumstances involved, normally if the announcement is not made within approximately 30 minutes after the delay or halt is implemented, the Exchange may commence the opening or reopening of trading in the stock. Special care is taken to ensure that material non-public information is not disclosed, even inadvertently, as a result of someone overhearing details relating to trading halts or delayed opening situations.

It is important that all appropriate Floor Official forms are completed.

[(c)] (e) Equipment Changeover.—The Exchange has established a non-regulatory trading halt condition designated as "Equipment Changeover".

This condition may be used when trading in a particular security is temporarily inhibited due to a systems, equipment or communications facility problem or for other technical reasons.

In making a determination on whether to halt trading in a security because of an "Equipment Changeover" condition, it is important to keep in mind that once halted, trading cannot be resumed for at least one minute even though, in many cases, the systems or equipment problem may be corrected in a much shorter period of time. Further, if, during the "Equipment Changeover" trading halt, [a significant order imbalance (one which would result in a price change from the last sale of one point or more for stocks under \$10, the lesser of 10% or three points for \$10—\$99.99 and five

points if \$100 or more—unless a Floor Governor deems circumstances warrant a lower parameter) develops] a pre-opening indication would be required to be published or a regulatory condition occurs, the nature of the halt will be changed, notice must be disseminated and trading cannot resume until three minutes after the first indication after the new halt condition. This factor should be taken into consideration along with market condition factors in making a determination on whether to declare an official trading halt.

As with any other halt, an "Equipment Changeover" trading halt requires the approval of a Floor Governor or two Floor Officials. All other policies relating to nonregulatory halts would apply including price indications.

[(d)] (f) Dissemination of Net Asset Value—With respect to Investment Company Units (described in Rule 1100), Trust Issued Receipts (described in Rule 1200), Currency Trust Shares (described in Rule 1300A), and Commodity Trust Shares (described in Rule 1300B) listed on the Exchange, if the Exchange becomes aware that the Net Asset Value ("NAV") is not being disseminated to all market participants at the same time, it will halt trading in the affected securities on the Exchange until such time as the NAV is available to all market participants.

Rule 124. Midday Auction

(c) At the end of the Midday Auction Pause, the Exchange will conduct the Midday Auction by re-opening the Midday Auction Stocks at a single price in the same manner as in Rule 123D for reopenings, with the following exceptions:

- (1) A pre-opening [I]indication[s] may be published [to the Consolidated Tape] during a Midday Auction Pause. Prior Floor Official approval is not required before publishing a[n] pre-opening indication. If a[n] pre-opening indication is published, it does not need to be updated before the Midday Auction and the Midday Auction may occur outside of any prior indication. A Midday Auction is not subject to the requirements that (i) a minimum of three minutes must elapse between the first pre-opening indication and the Midday Auction, or (ii) if more than one pre-Opening indication is published, a minimum of one minute must elapse before the Midday Auction; and

Rule 9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)

Any member organization or covered person may be subject to a fine under Rule 9216(b) with respect to any rules listed below.

- Rule 123D requirements for DMMs relating to openings, re-openings, delayed openings, and trading halts[, and tape indications].
