

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69696; File No. SR-NYSEMKT-2013-46)

June 4, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1000 - Equities to Revise the Manner by which the Exchange will Phase Out the Functionality Associated with Liquidity Replenishment Points in Connection with the Implementation of the Limit Up – Limit Down Plan

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on May 31, 2013 NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 Rule 1000 - Equities to revise the manner by which the Exchange will phase out the functionality associated with liquidity replenishment points (“LRPs”) in connection with the implementation of the Limit Up – Limit Down Plan (the “Plan”). The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, on the Commission’s website at <http://www.sec.gov>, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

On April 2, 2013, the Exchange filed to amend Rule 1000 - Equities to provide that it would phase out the functionality associated with LRPs to coincide with the implementation of the Plan by specifying that, beginning on April 8, 2013, LRPs will no longer be in effect for Tier 1 NMS Stocks, and beginning on the earlier of August 1, 2013 or such date as Phase II of the Plan is implemented, LRPs will no longer be in effect for all NMS stocks.<sup>4</sup> The operative date of the LRP Filing was April 8, 2013.

The Exchange noted in the LRP Filing that it would phase out the LRP functionality for securities as they are covered by the Plan in coordination with the Plan's Phase I and Phase II implementation timelines and that LRPs would remain in place for any securities not covered by the Plan. Because Phase I of the Plan is in effect only from 9:45 a.m. to 3:30 p.m. Eastern, under the current rule, between 9:30 and 9:45 a.m. Eastern and 3:30 and 4:00 p.m. Eastern, Tier 1 NMS Stocks are neither covered by the Plan nor have available LRP functionality.

The Exchange therefore proposes to amend Rule 1000 - Equities to specify that LRPs will no longer be in effect for Tier 1 NMS Stocks from the time the first Price Band under the Plan is published for a Tier 1 NMS Stock until 3:30 p.m. Eastern (or 30 minutes before the close

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<sup>4</sup> See Securities Exchange Act Release No. 69294 (April 4, 2013), 78 FR 21441 (April 10, 2013) (SR-NYSEMKT-2013-33) ("LRP Filing").

on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m. Eastern). As proposed, LRPs would be available for Tier 1 NMS Stocks from opening until such time the Exchange receives a Price Band under the Plan for such stock, at which point LRP functionality would end. The Exchange would re-engage LRP functionality for such Tier 1 NMS Stocks at 3:30 p.m. Eastern, or, 30 minutes before the close on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m. Eastern.<sup>5</sup>

The Exchange further proposes to amend how it would phase out LRP functionality in connection with Phase II of the Plan. Rule 1000 - Equities currently provides that LRPs will be discontinued for all NMS Stocks on the earlier of August 1, 2013 or such date as Phase II of the Limit Up – Limit Down Plan is implemented. Because the implementation of Phase II is currently scheduled to begin on August 5, 2013, and will be a roll-out implementation that will take several weeks, the Exchange believes that the “earlier of” language would require the Exchange to disable all LRP functionality on August 1, 2013, regardless of whether an NMS Stock is subject to Phase II of the Plan.

Because the intent of the LRP Filing was to ensure that stocks not covered by the Plan would have LRP functionality, the Exchange proposes to amend Rule 1000 - Equities to provide that LRPs will be discontinued in their entirety on such date as Phase II of the Plan is implemented for an NMS Stock. As amended, LRP functionality would remain available for an NMS Stock (either full day or only for the post-open/pre-close periods for Tier 1 NMS Stocks) until such time it is covered by Phase II of the Plan, regardless of when Phase II is implemented for such NMS Stock.

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<sup>5</sup> The Exchange is scheduled to close at 1:00 p.m. Eastern on July 3, 2013.

Because of the technology changes associated with this rule proposal, the Exchange will implement this proposed change over a short roll-out period and will announce by Trader Update when the LRP functionality will be available for specific Tier 1 NMS Stocks.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by ensuring that an NMS Stock will be covered either by LRP functionality or the Plan during the duration of Phase I of the Plan and implementation of Phase II of the Plan, and therefore an NMS Stock listed on the Exchange will be protected from significant price dislocation at all times.

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

The Exchange does not believe that the proposed rule change will impose a burden on competition because the proposed rule change would reinstate LRPs only during such period when an NMS Stock is not covered by the Plan, and therefore is consistent with Exchange operations prior to implementation of Phase I of the Plan.

### 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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it anticipates that the technology changes associated with this rule proposal would be available on or about June 6, 2013 and the Exchange anticipates that it would be able to complete the technology roll out before June 21, 2013, which is an Expiration Friday. The Exchange stated that it believes that the waiver of the operative delay is consistent with investor protection and the public interest because it will enable LRP functionality for those periods when Tier 1 and Tier 2 NMS Stocks are not covered by the Plan. Based on the

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange's statements, the Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.<sup>12</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEMKT-2013-46 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEMKT-2013-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>12</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 such 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 No. SR-NYSEMKT-2013-46 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.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).