

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74838; File No. SR-NYSEMKT-2015-33)

April 29, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15 – Equities to Reflect that Exchange Systems Will Not Publish Order Imbalance Information on the Initial Public Offering of a Security

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 21, 2015, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 Rule 15 – Equities to reflect that Exchange systems will not publish Order Imbalance Information on the initial public offering (“IPO”) of a security. 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, 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 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

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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.

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 Rule 15 – Equities (“Rule 15”) to reflect that Exchange systems will not publish Order Imbalance Information if a security is an IPO.

Rule 15(c) currently provides that Exchange systems may make available, from time to time and as the Exchange shall determine, Order Imbalance Information<sup>4</sup> prior to the opening of a security on the Exchange. Rule 15(c)(2)(i) provides that 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 sell side of the market. For circumstances when there is no last reported sale in a security on the Exchange, i.e., IPOs or transferred securities, Rule 15(c)(2)(ii)(D) and (E) specify a different reference price, which for IPOs is the offering price.

To reduce confusion regarding pricing of an IPO, the Exchange proposes to discontinue publishing Order Imbalance Information if a security is an IPO. The Exchange believes that the Order Imbalance Information currently published for IPOs may not be the most accurate indication of the state of the market for individual IPO securities. In calculating Order Imbalance Information for IPOs, Exchange systems do not have access to interest represented in

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<sup>4</sup> 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). As discussed below, during IPOs there is significant non-electronic pre-opening interest in the form of oral orders by Floor brokers that would not be captured by the Exchange’s order imbalance feed.

the crowd by Floor brokers, i.e., orally bid or offered at the point of sale on the trading Floor, which in the case of IPOs can represent significant interest. Similarly, Exchange systems do not have access to DMM interest. In the case of IPOs, both types of interest play an important role in determining the initial opening price, which can fluctuate significantly during the price discovery process leading up to the opening transaction. The Exchange believes it is therefore appropriate to discontinue publishing Order Imbalance Information for a security that is an IPO.

The Exchange notes that indications as required pursuant to Rules 15(a) and/or 123D(1) – Equities, if applicable,<sup>5</sup> would still be published, if warranted. Because the DMM, who does

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<sup>5</sup> 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 (representing a numerical or percentage change from the security’s closing price per share or, in the case of an IPO, the security’s offering price), the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (a “Rule 15 Indication”), which represents a range of where a security may open. The Rule 15 Indication is a one-time snapshot that is published on the Exchange’s proprietary data feeds prior to the scheduled 9:30 a.m. opening time. A Rule 15 Indication 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. In contrast, because Exchange systems would not have access to orally-represented interest in the trading crowd, Rule 15 Indications published by the Exchange would not reflect Floor broker orally-represented crowd interest. For this reason, DMM-entered Rule 15 Indications have priority over Exchange-generated Rule 15 Indications and therefore if a DMM issues a Rule 15 Indication, the Exchange would not publish a Rule 15 Indication in that security. See Exchange Act Release No. 34-73351 (October 15, 2014), 79 FR 62991, 62991 (October 21, 2014). Rule 123D(1) – Equities requires the dissemination of one or more indications in connection with any delayed opening where a security has not opened or been quoted by 10 a.m. In addition, Rule 123D(1) – Equities provides that dissemination of one or more indication is mandatory for an opening which will result in a “significant” price change from the previous close. For securities priced under \$10, such indications are mandatory if the price change is one dollar or more; for securities between \$10 and \$99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over \$100, indications are required for price movements of five dollars or more. These guidelines are applicable to IPOs based on the offering price. The Rule provides specific guidelines for both the number of indications and length of time between indications. The DMM is responsible for publishing the Rule 123D – Equities 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

have knowledge of Floor-based trading interest for an IPO, is responsible for publishing indications pursuant to Rules 15(a) and/or 123D(1) – Equities, the Exchange believes that such indications represent a truer state of the market for an IPO. The Exchange believes that discontinuing Order Imbalance Information would reduce any confusion in the market if there is a difference between the Order Imbalance Information and pricing information that may be published pursuant to a Rule 15(a) or Rule 123D(1) – Equities indication.

To effectuate this change, the Exchange proposes to delete the rule text in subpart (D) of Rule 15(c)(2)(ii), which requires the Exchange to use the IPO offering price as the reference price for automated Order Imbalance Information, and renumber current Rule 15(c)(2)(ii)(E) as new Rule 15(c)(2)(ii)(D). No other changes to the Exchange’s rules are necessary.

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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 discontinuing publishing Order Imbalance Information for a security that is an IPO would remove impediments to and perfect the mechanism of a free and open market

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the opening transaction would be. All indications pursuant to Rule 123D – Equities require the supervision and approval of a Floor Official and are published to the Consolidated Tape.

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

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

and a national market system by eliminating a source of information that may not accurately reflect the market for such securities, and which may differ from indications published by the DMM pursuant to either Rule 15(a) or Rule 123D(1) – Equities, as may be applicable. The Exchange further believes that discontinuing publishing such information 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.

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 improve the current process of providing pre-market information to customers and the investing public about a security that is an IPO.

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

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

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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).

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.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-33 on the subject line.

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2015-33. 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 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 Number SR-NYSEMKT-2015-33 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>

Brent J. Fields  
Secretary

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