

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79443; File No. SR-NYSEMKT-2016-109)

December 1, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Governing Business Continuity and Disaster Recovery Planning

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 November 22, 2016, 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 Exchange. 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 governing business continuity and disaster recovery to delete Rule 49 - Equities (Emergency Powers) and set an operative date for Rule 49 - Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing). 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

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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.

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 governing business continuity and disaster recovery to delete Rule 49 - Equities (Emergency Powers) ("Print as P Rule") and set an operative date for Rule 49 - Equities (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing) ("Rule 49"). The Exchange proposes to make these changes because the Exchange has completed testing of the operation of Rule 49 in its Disaster Recovery "DR" facility and therefore plans to implement it. Accordingly, the Exchange proposes to delete its Print as P Rule as obsolete, with an operative date of November 23, 2016.

On September 29, 2016, the Commission approved amendments to the Exchange's business continuity and disaster recovery plans.<sup>4</sup> In that filing, the Exchange added the following preamble to the Print as P Rule:

This version of Rule 49 - Equities will remain operative until the proposed rule changes described in SR-NYSEMKT-2016-68 are approved and the Exchange files a separate proposed rule change to delete this version of Rule 49 - Equities and preamble and to establish the operative date of paragraph (a) of "Rule 49 - Equities. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing." Subject to such separate proposed rule change, the Exchange

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<sup>4</sup> See Securities Exchange Act Release No. 78917 (September 23, 2016), 81 FR 67036 (September 29, 2016) (SR-NYSEMKT-2016-68) (order granting approval of proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2).

will announce via Trader Update the operative date of the deletion of this Rule and implementation of paragraph (a) of Rule 49- Equities. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing.

In addition, the Exchange added the following preamble to Rule 49 and added an “N” modifier to Rule 49(b), to distinguish it from paragraph (b) of the Print as P Rule.

The Exchange will file a separate proposed rule change to establish the operative date of paragraph (a) of this version of Rule 49 - Equities and to delete "Rule 49 - Equities. Emergency Powers" and this preamble. Until such time, "Rule 49 - Equities. Emergency Powers" will remain operative. Subject to such separate proposed rule change, the Exchange will announce via Trader Update the operative date of paragraph (a) of this Rule and deletion of "Rule 49 - Equities. Emergency Powers."

Member organizations required to test Exchange Backup Systems under paragraph (b)(N) of this Rule will be required to test trading on the Exchange's Disaster Recovery Facility under paragraph (a) of this Rule on date(s) to be determined by the Exchange. Such mandatory testing dates will be announced by Trader Update.

On November 5 and 19, 2016, the Exchange held the mandatory testing sessions for the operation of Rule 49 in the DR facility.<sup>5</sup> The Exchange has determined that these tests were successful because all member organizations required to test trading on the Exchange’s DR

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<sup>5</sup> The Exchange announced by Trader Update that industry tests would be held on November 5, 2016 and November 19, 2016. See NYSE Trader Updates, dated September 9 and 16, 2016, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_and\\_NYSE\\_MKT\\_DR\\_Trader\\_Update\\_Final.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_and_NYSE_MKT_DR_Trader_Update_Final.pdf) and [https://www.nyse.com/publicdocs/nyse/markets/nyse/DR\\_Testing.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/DR_Testing.pdf)

facility, as specified in the second paragraph of the preamble to Rule 49, participated in the tests and the DR facility operated as provided for in Rule 49. Accordingly, the Exchange proposes to retire its Print as P Rule and implement Rule 49 operative November 23, 2016.

The Exchange therefore proposes to:

- Delete the Print as P Rule, including the preamble;
- Delete the explanatory preamble to Rule 49; and
- Delete the “N” modifier to new Rule 49(b), which distinguished new Rule 49(b) from the Print as P Rule 49(b).

In addition to this proposed rule change, the Exchange proposes to announce the operative date of November 23, 2016 via Trader Update.<sup>6</sup>

## 2. Statutory Basis

The proposed rule changes are consistent with Section 6(b) of the Act,<sup>7</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

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<sup>6</sup> New York Stock Exchange LLC, the Exchange’s affiliate, has also submitted substantially the same proposed rule change to propose the same changes as described herein. See SR-NYSE-2016-81. In addition, NYSE Arca, Inc., the Exchange’s affiliate, has submitted a proposed rule change to delete NYSE Arca Equities Rule 2.100, which allowed it to act on behalf of and at the direction of the Exchange if the Exchange invoked its Print as P Rule. See SR-NYSEArca-2016-154.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

In particular, the Exchange believes that amending its rules to delete the Print as P Rule, which is no longer operative after the successful completion of mandatory testing by the Exchange's member organizations of the operation of Rule 49, would promote the protection of investors and the public interest because it would promote clarity and transparency on the Exchange rules governing the Exchange's business continuity and disaster recovery planning. The Exchange further believes that deleting the superseded rule that was applicable only to the prior disaster recovery plan, deleting the preamble to Rule 49, and deleting the "N" modifier that distinguished the new rule from the now obsolete rule would remove impediments to and perfect the mechanism of a national market system because these proposed changes would add greater clarity to the Exchange's rules and promote market transparency and efficiency.

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

The Exchange does not believe that the proposed rule change would 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 designed to address competitive issues but rather is designed to facilitate trading in Exchange-listed securities on its DR facility. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency on the Exchange rules which would govern trading in Exchange traded securities if they trade on the Exchange's DR facility and greater efficiency and transparency concerning trading on the Exchange in the event of a disaster.

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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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>11</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>12</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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so would allow the Exchange to more quickly implement a business continuity and disaster recovery plan under which the Exchange no longer relies on the facilities of an affiliated exchange. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>13</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

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>14</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-2016-109 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-NYSEMKT-2016-109. 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>).

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See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSEMKT-2016-109 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>15</sup>

Brent J. Fields  
Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).