

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70098; File No. SR-NYSEMKT-2013-66)

August 2, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Adopt the Text of New York Stock Exchange Rule 49 as Rule 49 – Equities In Order To Authorize Exchange Officials To Exercise the Same Emergency Powers As NYSE Officials May Exercise

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 July 22, 2013, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 [adopt] the text of New York Stock Exchange (“NYSE”) Rule 49 as Rule 49 – Equities in order to authorize Exchange officials to exercise the same emergency powers as NYSE officials may exercise. The text of 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt the text of proposed NYSE Rule 49 as Rule 49 – Equities in order to authorize Exchange officials to exercise the same emergency powers as NYSE officials may exercise.⁴

Background

In 2009, NYSE adopted NYSE Rule 49 to provide NYSE officials with the authority to declare an emergency condition⁵ with respect to trading on or through NYSE's systems and facilities and to act as necessary in the public interest and for the protection of investors.⁶ The authority in NYSE Rule 49 may be exercised when, due to an emergency condition, NYSE's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, cannot be utilized. If such an emergency condition is declared, a qualified NYSE

⁴ See SR-NYSE-2013-54.

⁵ The definition of "emergency" is the one used in Section 12(k)(7) of the Act and is also used by other exchanges and the Securities and Exchange Commission ("Commission"). Section 12(k)(7) defines an emergency to mean "(A) a major market disturbance characterized by or constituting – (i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt – (i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions." 15 U.S.C. 78l(k)(7).

⁶ See Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR-NYSE-2009-105).

officer may, among other things, designate NYSE Arca LLC (“NYSE Arca”), NYSE’s and the Exchange’s affiliate, to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of NYSE so that NYSE, as a self-regulatory organization (“SRO”), can remain operational.⁷ NYSE Arca, which would continue to operate simultaneously during the emergency condition, has a counterpart rule, NYSE Arca Equities Rule 2.100. To date, NYSE has not invoked NYSE Rule 49. The Exchange currently has no counterpart rule.

On October 29 and 30, 2012, due to the dangerous conditions that developed as a result of Superstorm Sandy, NYSE and the Exchange, as well as a number of their member organizations located in the tri-state area, were unable to open because of the risk of flooding at their physical locations. In addition, other broker-dealers and exchanges with facilities in the area were also faced with significant staffing challenges because the storm conditions prevented personnel from getting to work. As a result, it was agreed, after consulting with other exchanges, market participants, and Commission staff, and in light of concerns over the physical safety of personnel and the possibility of technical issues, that all U.S. equities and options markets would be closed for those two days.

NYSE has proposed to amend NYSE Rule 49 to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an emergency condition, reflect the operational preferences of the industry, and reflect the current structure of member organization connectivity to and system coding for exchange systems.⁸ The current NYSE rule contemplates the Exchange remaining operational during the emergency condition and both NYSE and NYSE

⁷ NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the “NYSE Arca Marketplace.” For the purposes of this filing and in the text of proposed Rule 49 – Equities, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

⁸ See supra [note 4].

Arca performing certain SRO functions with respect to the same trading activity that would be taking place on NYSE Arca. NYSE believes that a more practical and effective structure would be to have all trading activity occurring on NYSE Arca under that SRO's authority, with one exception. NYSE Arca would, on behalf and at the direction of NYSE, disseminate certain primary listing market messages as both NYSE and NYSE Arca messages so that market participants' systems could properly recognize such messages. NYSE Arca would do so beginning on the next trading day following the declaration of the emergency condition. All trading volume on NYSE Arca in NYSE-listed securities during the emergency condition would be reported as NYSE Arca volume, except for volume associated with the opening and closing prints in NYSE-listed securities, which would be deemed NYSE volume. NYSE Arca has submitted a related rule filing.⁹

Proposed Rule Change

To align its authority with its affiliates and mitigate the possibility of having to close in the event of a future emergency condition, the Exchange proposes to adopt the text of proposed NYSE Rule 49. The proposed rule change would provide NYSE MKT officials with the same emergency powers that NYSE officials may exercise. Each of the provisions of the proposed rule change is described below.

Under proposed Rule 49(a)(1) – Equities, in the event of an emergency, a qualified Exchange officer would have the authority to declare an emergency condition with respect to trading on or through the systems and facilities of the Exchange (“Emergency Condition”) and designate NYSE Arca to perform the functions set forth in proposed Rule 49(b)(2)(A) – Equities on behalf of and at the direction of the Exchange.

⁹ See SR-NYSEArca-2013-77.

Under proposed Rule 49(a)(2) – Equities, no declaration of an Emergency Condition could be made pursuant to Rule 49(a)(1) – Equities unless (A) a regional or national emergency existed that would prevent the Exchange from operating normally, and (B) such declaration was necessary so that the securities markets, in general, could continue to operate and trading in Exchange-listed securities, in particular, could continue to occur in a manner consistent with the protection of investors and in pursuit of the public interest.

Under proposed Rule 49(a)(3) – Equities, the term “emergency” as used in the rule would mean an “emergency” as defined in Section 12(k)(7) of the Act.¹⁰ The term “qualified Exchange officer” would mean the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If none of these individuals were able to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. would be a “qualified Exchange officer” for purposes of the rule.

Under proposed Rule 49(b)(1) – Equities, when an Emergency Condition is declared under paragraph (a), the Exchange: (A) would halt all trading conducted on the Exchange’s systems and facilities and would not route any unexecuted orders to NYSE Arca; (B) would accept cancellations for Good ‘Til Cancelled (“GTC”) orders; and (C) would purge any unexecuted orders from the Exchange’s own systems and facilities as soon as practicable following declaration of the Emergency Condition.

Under proposed Rule 49(b)(2) – Equities, beginning on the next trading day following the

¹⁰ See supra [note 5].

declaration of the Emergency Condition,¹¹ NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate as messages of both the Exchange and NYSE Arca (A) the official opening and closing prices of Exchange-listed securities to the Consolidated Tape Association (“CTA”), and (B) notifications to the Consolidated Quotation System (“CQS”) for Exchange-listed securities of (i) regulatory halts and resumption of trading thereafter, (ii) trading pause and resumption of trading thereafter, and (iii) Short Sale Price Test trigger and lifting thereafter (collectively, “primary listing market notifications”).¹² The Exchange notes that in the event of an intra-day declaration of an Emergency Condition, the Exchange would manually disseminate primary listing market notifications to CQS. Quotes or orders of Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to CQS as bids or offers of NYSE Arca, and quotes or orders of Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to CTA as executions of NYSE Arca, except that executions in the opening or closing auctions would be reported as Exchange volume only in order to avoid any double counting.

The Exchange believes that the proposed rule would minimize the impact of declaring an Emergency Condition because NYSE Arca already trades Exchange-listed securities on an unlisted trading privileges basis and prints such executions as NYSE Arca, or “P,” trades.¹³ This

¹¹ The Exchange’s current and proposed disaster recovery plans do not enable the intraday failover of the Exchange’s system onto NYSE Arca, including dissemination of primary listing market notifications; such technology is only available on a next-day basis.

¹² See NYSE MKT Rules 123D – Equities, 80B – Equities, 80C – Equities, and 440B – Equities. Each of these types of notifications is a responsibility of the primary listing market for the security.

¹³ The “P” designation reflects one of NYSE Arca’s predecessor names, Pacific Exchange, Inc., before it was purchased by NYSE Euronext.

arrangement would be compatible with market participants' system coding conventions, where orders routed to an exchange generally come back as executions from that exchange, unless routed out. Thus, quotes and orders in Exchange-listed securities routed to NYSE Arca during the Emergency Condition would come back to the entering firm as "P" executions, rather than "A" executions.¹⁴ Similarly, the Exchange further understands that in order for many market participants' systems to recognize the primary listing market notifications, the notifications must carry an "A" designation to associate it with Exchange-listed securities. If the notifications were disseminated only as "P" notifications, they may not be properly recognized by these market participants' systems. However, other market participants may be able to read such primary listing market notifications if disseminated with the "P" designation. Accordingly, during an Emergency Condition, in order to accommodate various market participants' existing technological frameworks for the temporary measures addressed in proposed Rule 49 – Equities, NYSE Arca would disseminate the official opening and closing prints for Exchange-listed securities and primary listing market notifications with both "P" and "A" designations. When NYSE Arca disseminates these messages on behalf of the Exchange, it will do so in accordance with its own rules and procedures for its primary listed securities.¹⁵ The Exchange believes that the proposed rule change offers a practical solution that will be compatible with most market participants' current system coding, which will allow the proposed rule change to be quickly and efficiently implemented and avoid the costs and delays associated with system reprogramming.

The Exchange believes that maintaining a primary market print for an Exchange-listed security's official opening price would assist market participants that rely on a primary market

¹⁴ The "A" designation reflects one of the Exchange's predecessor names, American Stock Exchange LLC, before it was purchased by NYSE Euronext.

¹⁵ Nonetheless, the Exchange will remain the SRO that is legally responsible for the notifications.

opening print as the basis for trading strategies for that trading day. For example, the pricing and valuation of certain indices, funds and derivative products require primary market prints.

Similarly, private corporate transactional contracts involving stock purchases or valuations frequently make reference to the primary market print rather than to the CTA print. In addition, certain indexes rely on the primary listing market closing print to calculate the index, and certain funds rely on the primary listing market closing print to calculate the fund's value. Thus, these market participants would benefit from the dissemination of the primary market prints as "A" messages and not have to engage in any system reprogramming to receive them.

Under proposed Rule 49(b)(3) – Equities, members and member organizations wishing to trade Exchange-listed securities during an Emergency Condition would be responsible for having contingency plans for establishing connectivity to NYSE Arca and changing the routing instructions for their order entry systems to send quotes and orders in Exchange-listed securities to NYSE Arca. Under proposed Rule 49(b)(4) – Equities, during an Emergency Condition, all trading of Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to NYSE Arca Equities rules (including but not limited to the opening, re-opening, and closing auction processes applicable to securities for which NYSE Arca is the primary listing market set forth in NYSE Arca Equities Rule 7.35), except that the Exchange's listing requirements for its listed securities would continue to apply.

Under proposed Rule 49(c)(1) – Equities, in connection with taking action under the rule, a qualified Exchange officer would make reasonable efforts to consult with the Commission before taking such action, or, if the qualified Exchange officer were unable to consult prior to acting, as promptly thereafter as practicable under the circumstances. The authority granted pursuant to the rule would be operative for up to 10 calendar days from the date that the

Exchange invoked such authority. The Exchange could request that the initial 10-calendar-day period be extended for a specific amount of time by submission of a rule filing pursuant to Section 19(b)(2) of the Act. Such extension would not take effect except upon approval of such a filing by the Commission. Actions taken pursuant to the rule could be terminated by the Exchange at any time. The Exchange would provide adequate prior notice to members, member organizations, Sponsored Participants and investors regarding its intention to terminate any such action.

The Exchange will announce by Trader Update when the Exchange and NYSE Arca will be ready to implement the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,¹⁸ in particular, in that it provides fair procedures for the disciplining of members¹⁹ and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(7).

¹⁹ The Exchange's equivalent to the term "member" in this context is "member organization."

Specifically, the Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system because it offers a practical solution to facilitate trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. All quoting and trading activity in NYSE MKT-listed securities during the Emergency Condition would be deemed NYSE Arca quoting and trading for purposes of CQS and CTA reporting and be subject to NYSE Arca's surveillance and discipline, except that the opening and closing prints and primary listing market notifications would be disseminated as both Exchange and NYSE Arca messages so that the majority of market participants' systems could properly receive and process them. As such, the proposed rule change reflects the operational preferences of the industry and the current structure of most member organizations' connectivity to and system coding for exchange systems and would reduce the systemic and administrative burdens on market participants by avoiding the need for reprogramming, depending on which message notifications their respective systems would be able to read during such an Emergency Condition. The Exchange believes that facilitating trading on NYSE Arca in Exchange-listed securities under that SRO's rules would benefit both issuers and investors by providing additional liquidity during the Emergency Condition.

The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would assist market participants that rely on or reference a primary market opening print in their trading strategies or private corporate transactional contracts involving stock purchases or valuations. In addition, certain indexes rely on the primary listing market closing print to calculate the index and certain funds rely on the primary listing market closing print to calculate

the fund's value. The proposed rule change would assist these market participants in performing these functions without requiring them to reprogram their systems.

The Exchange also believes that the proposed rule change would promote just and equitable principles of trade and provide for fair discipline by clearly delineating SRO surveillance and disciplinary functions. The Exchange believes that it would be more effective for NYSE Arca to discipline NYSE MKT members and member organizations under NYSE Arca rules rather than having the Exchange enforce NYSE Arca rules, as the NYSE would do under its current rule.

In sum, the Exchange believes that the proposed rule change would substantially strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

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 designed to facilitate trading in Exchange-listed securities on NYSE Arca during an Emergency Condition. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally.

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

within such longer period (i) as the Commission may designate up to 90 days of such date 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-NYSEMKT-2013-66 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 Number SR- NYSEMKT-2013-66. 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 will also 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 publicly available. All submissions should refer to File Number SR- NYSEMKT-2013-66 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).