

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77348; File No. SR-NYSEMKT-2016-29)

March 11, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 401 and 402 of the NYSE MKT Company Guide to Harmonize the Exchange's Immediate Release and Trading Halt Policies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("SEC" or "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 Sections 401 and 402 of the NYSE MKT Company Guide (the "Company Guide") to harmonize the Exchange's immediate release and trading halt policies with recent changes made to the comparable policies of the New York Stock Exchange ("NYSE"). 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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 Sections 401 and 402 of the Company Guide to harmonize the Exchange's immediate release and trading halt policies with recent changes made to the comparable policies of the NYSE (referred to herein as the "NYSE Amendment").<sup>3</sup>

Consistent with the NYSE Amendment, the Exchange proposes to amend Sections 401 and 402 of the Company Guide to (i) expand the pre-market hours during which listed companies are required to notify the Exchange prior to disseminating material news, and (ii) provide the Exchange with authority to halt trading (a) during pre-market hours at the request of a listed company, (b) when the Exchange believes it is necessary to request certain information from listed companies, and (c) when an Exchange-listed security is also listed on another national or foreign securities exchange and such other exchange halts trading in such security for regulatory reasons. The Exchange also proposes to add commentary to Section 402 of the Company Guide to provide guidance related to the release of material news after the close of trading on the Exchange.

Sections 401 and 402 of the Company Guide give the Exchange authority to halt trading in a listed company's security under certain circumstances. Currently, the Exchange may impose a regulatory trading halt when a listed company announces material news<sup>4</sup> shortly before the

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<sup>3</sup> See Securities Exchange Release No. 75809 (September 2, 2015); 80 FR 54362 (September 9, 2015) (SR-NYSE-2015-38).

<sup>4</sup> The Exchange considers material news to be any news that is reasonably likely to have a material impact on the price or trading volume of a listed security.

opening of trading on the Exchange or during the Exchange trading session (currently 9:30 a.m. to 4:00 p.m.). When that happens, the Exchange will typically institute a regulatory halt in trading, which halts trading on all market centers, to ensure full dissemination of the news to investors. The Exchange proposes to expand the hours and circumstances under which it can declare a regulatory trading halt.

Currently, Sections 401 and 402 of the Company Guide require listed companies to notify the Exchange at least ten minutes in advance of releasing material news if such release will take place shortly before the opening of trading on the Exchange or during Exchange market hours (the “Material News Policy”). The Exchange proposes to amend Sections 401 and 402 to require companies to comply with the Material News Policy between 7:00 a.m. and 4:00 p.m. Eastern Time. In the Exchange’s experience, most companies release news related to corporate actions and other material events between 7:00 a.m. and 9:30 a.m. Although trading on the Exchange does not begin until 9:30 a.m., the Exchange believes that material news released between 7:00 a.m. and 9:30 a.m. has the potential to cause volatility in both price and volume during pre-market trading that occurs on other market centers as well as once trading opens on the Exchange. However, because there is a lower volume of trading in such pre-market hours, the Exchange believes that a listed company is most well positioned to determine whether a trading halt is appropriate given the news it intends to release. Therefore, to facilitate an orderly opening and ensure thorough dissemination of material news, the Exchange believes it is beneficial to require companies to comply with the Material News Policy and advise whether a trading halt is appropriate during pre-market hours.

As discussed above, when a listed company releases material news during the course of the trading day, the Exchange will typically halt trading temporarily to ensure full dissemination

of the news. Under the proposed rules, between 7:00 a.m. and the opening of trading on the Exchange, the Exchange may implement a regulatory halt in circumstances where (i) the listed company has informed Exchange staff that it intends to make a public announcement of material news and (ii) the listed company requests that trading in its listed securities be halted pending dissemination of the public announcement (a “Pre-Market Halt”).<sup>5</sup> While trading on the Exchange does not begin until 9:30 a.m. Eastern Time, trading (including trading in Exchange listed securities) begins on NYSE Arca Equities, Inc., the Nasdaq Stock Market and other national securities exchanges at 4:00 a.m. Eastern Time. When the Exchange implements a regulatory trading halt to allow for the release of material news, other national securities exchanges that trade Exchange-listed securities also halt trading in such security until the Exchange lifts the halt.<sup>6</sup>

The Exchange notes that the volume of trading in the hours before trading begins on the Exchange is generally lighter and conducted predominantly by professional investors. Because of this reduced trading volume and the fact that the Exchange itself is not yet open for trading during these hours, the Exchange believes it is appropriate to institute a Pre-Market Halt only at the request of a listed company. The Exchange notes that the NYSE Amendment contains a similar provision and Nasdaq Stock Market (“Nasdaq”) has adopted a comparable rule with respect to trading halts between the hours of 7:00 a.m. and 9:30 a.m.<sup>7</sup> Lastly, when a trading halt

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<sup>5</sup> However, the proposed rule will state that if it appears that dissemination of material news will not be complete prior to the opening of trading on the Exchange at 9:30 a.m., the Exchange may temporarily halt trading in order to facilitate an orderly opening process. This is consistent with the Exchange’s current practice.

<sup>6</sup> See, for example, NYSE Arca Equities Rule 7.18 and Nasdaq Stock Market Rule 4120(a)(2) for the authority to initiate a trading halt.

<sup>7</sup> See Section 202.06(B) of the NYSE Listed Company Manual and Nasdaq Stock Market Rule 4120(a)(1) (which applies between the hours of 4:00 a.m. and 9:30 a.m.).

is implemented during Exchange market hours, Rule 123D--Equities specifies that a Floor Governor or two Floor Officials must approve the halt in trading. However, because a Pre-Market Halt will only be instituted at the request of a listed company and because Floor Governors and Floor Officials are not typically on the trading floor during pre-market hours, the Exchange proposes to include a statement that, notwithstanding anything to the contrary in Rule 123D(1)--Equities, the approval of the Floor Governors or Floor Officials is not required for a Pre-Market Halt.

The Exchange proposes to further amend Section 402 of the Company Guide to add proposed Commentary .02, which will set forth circumstances in which it may institute a regulatory halt while it awaits information requested from a listed company. Sections 401 and 402 currently limit the Exchange's authority to halt trading to situations when a listed company intends to release material news shortly before and during market hours. However, in the Exchange's experience there are other scenarios when it may be advisable to halt trading for the protection of investors. For example, if there is uncertainty surrounding material news issued by a listed company or a company's compliance with the Exchange's continued listing standards, the Exchange believes it may be appropriate to halt trading while it gathers information to resolve such ambiguity. Accordingly, the Exchange proposes to add proposed Commentary .02 to Section 402 to state that if it is necessary to request information from a listed company relating to (i) material news, (ii) the listed company's compliance with Exchange continued listing requirements, or (iii) any other information which is necessary to protect investors and the

public interest, the Exchange may halt trading in such listed company's security until it has received and evaluated the requested information.<sup>8</sup>

As discussed above, the Exchange believes that the release of material news immediately prior to the commencement of trading on the Exchange has the potential to cause significant volatility to the opening process. Similarly, material news released immediately after 4:00 p.m. Eastern Time can interfere with the closing process. Although trading on the Exchange stops at 4:00 p.m. Eastern Time, the order book for each listed security is manually closed by the security's Designated Market Maker ("DMM"), a process that can take several minutes before the closing auction is completed. Because trading continues after 4:00 p.m. Eastern Time on other exchanges, if a listed company releases material news immediately after 4:00 p.m. Eastern Time there can be significant price movement on other markets when compared to the last sale price on the Exchange. The result, therefore, is that a DMM can be executing trades at the Exchange closing price while the same security is simultaneously trading on other exchanges at a very different price. As this discrepancy can cause confusion to investors, the Exchange proposes to include advisory text as proposed new Commentary .03 to Section 402 of the Company Guide requesting that listed companies intending to release material news after the close of trading on the Exchange wait until the earlier of the publication of their security's official closing price on the Exchange or 15 minutes after the scheduled closing time on the Exchange.<sup>9</sup> The Exchange proposes to specify that trading on the Exchange typically closes at

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<sup>8</sup> The proposed change in this regard mirrors Section 202.06(B) of the NYSE Listed Company Manual and Nasdaq Stock Market Rule 4120(a)(5).

<sup>9</sup> Although the Exchange typically closes at 4:00 p.m. Eastern Time, there are certain days each year when it closes at 1:00 p.m. Eastern Time. The phrase "15 minutes after the scheduled closing time" will account for these early closings.

4:00 p.m. Eastern Time, except that on certain days trading closes early at 1:00 p.m. Eastern Time.

Lastly, the Exchange proposes to include in proposed Commentary .02 to Section 402 a provision stating that it may halt trading in an American Depositary Receipt (“ADR”) or other security listed on the Exchange, when the Exchange-listed security (or the security underlying the ADR) is listed on or registered with another national securities exchange or foreign exchange or market and such other exchange (or regulatory authority overseeing such exchange) halts trading in such security for regulatory reasons.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the investor protection objectives of section 6(b)(5) because it gives the Exchange greater flexibility to implement regulatory trading halts in a listed security when such halts may be necessary for the

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<sup>10</sup> The Exchange notes that the NYSE follows this practice under Section 202.06(B) of the Listed Company Manual and Nasdaq does so under Nasdaq Stock Market Rule 4120(a)(4).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

protection of investors. Specifically, the proposed rule change will alter the hours in which listed companies are required to comply with the Material News Policy such that the hours are from 7:00 a.m. to 4:00 p.m. Eastern Time (rather than just shortly before the opening of trading on the Exchange and during the Exchange trading session, as is currently the case). The proposed rule change will also enable the Exchange to (i) implement a Pre-Market Halt at the request of a listed company when the company intends to issue material news between 7:00 a.m. and 9:30 a.m. Eastern Time, (ii) halt trading when it believes it is necessary to request certain information from listed companies, and (iii) halt trading in an ADR or other Exchange-listed security when the Exchange-listed security or the security underlying the ADR is listed on or registered with another national securities exchange or foreign exchange or market and is halted on such other exchange or market for regulatory reasons. Additionally, the Exchange proposes to include advisory text in Section 402 of the Company Guide requesting that listed companies intending to release material news after the close of trading on the Exchange wait until the earlier of the publication of their security's official closing price on the Exchange or 15 minutes after the scheduled closing time on the Exchange. The Exchange believes this change will eliminate confusion to investors when a DMM is executing a trade at the Exchange closing price while the same security is simultaneously trading on other exchanges at a very different price.

The Exchange believes that each of the proposed changes enumerated above is consistent with the investor protection objectives of section 6(b)(5) because they provide the Exchange with additional authority to halt trading in circumstances where material news that may impact trading is to be released by listed companies or has not yet been fully disseminated. The Exchange believes that material news is highly relevant to investors when deciding to buy or sell securities and thus providing the Exchange with additional authority to halt trading while such news is



released and disseminated is protective of investors. In addition, the Exchange believes the proposed rule change is consistent with the protection of investors because it will specify in Exchange rules the scenarios in which a trading halt may be necessary, thereby promoting transparency in Exchange rules and making them easier to navigate. In giving the Exchange authority to declare regulatory trading halts in situations described herein, the proposed rule change enables the Exchange to act in the best interest of protecting investors.

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

The Exchange believes that the proposed amendments to Sections 401 and 402 of the Company Guide do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed herein, the Exchange's proposed amendments to Sections 401 and 402 are designed to give the Exchange greater flexibility to halt trading in a particular listed security when the Exchange believes a halt is necessary or appropriate. Currently, Sections 401 and 402 only permit the Exchange to implement regulatory trading halts for the dissemination of material news. As currently drafted, the Exchange believes these rules are unnecessarily restrictive and do not cover the full spectrum of situations where a trading halt may be necessary for the protection of investors. In addition, the Exchange believes that its proposed changes are consistent with the NYSE and Nasdaq rules with respect to trading halts. For the foregoing reasons, therefore, the Exchange does not believe that such changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

At any time within 60 days of the filing of the 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) of the Act<sup>15</sup> 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-2016-29 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</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-2016-29. 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-NYSEMKT-2016-29, 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>16</sup>

Lynn M. Powalski  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).