

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79479; File No. SR-NYSEMKT-2016-104)

December 6, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide that the Exchange Would Not Be Required to Report to The Securities Information Processor an Official Closing Price, as Defined under Rule 123C(1)(e)(i) - Equities, as an “M” Sale Condition

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 November 23, 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 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 this rule change to provide that the Exchange would not be required to report to the securities information processor an Official Closing Price, as defined under Rule 123C(1)(e)(i) - Equities, as an “M” sale condition. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 is proposing to provide that the Exchange would not be required to report to the securities information processor (“SIP”) an Official Closing Price, as defined under Rule 123C(1)(e)(i) - Equities, as an “M” sale condition.⁴ This proposed rule change would not change how the Official Closing Price would be determined and disseminated if the Exchange is unable to conduct a closing transaction in one or more securities due to a systems or technical issue, as described in Rules 123C(1)(e)(ii) – (iv) - Equities.

As set forth in the SIP Specifications, a price reported to the SIP by an exchange under the “M” sale condition, which is called the “Market Center Official Close,” is not

⁴ For a description of all sale conditions that are reportable to the SIP, including the “M” and “6” sale conditions, see the Consolidated Tape System Participant Communications Interface Specification, dated September 15, 2016, at 87 (“SIP Specifications”), available here: https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/cts_input_spec.pdf.

used for purposes of determining a consolidated last sale price or the high or low price of a security and does not include any volume information. Each exchange determines what price could be reported to the SIP as its “Market Center Official Close.” To date, the Exchange has not reported to the SIP a price with an “M” sale condition.

By contrast, a trade reported to the SIP as a Market Center Closing Trade with a “6” sale condition includes volume information, is included in the consolidated last sale, and is included in the high or low price of a security. The Exchange reports to the SIP closing auction trades of a round lot or more with a “6” sale condition.⁵

Recently, the Exchange amended Rule 123C(1)(e) - Equities to specify back-up procedures for determining an Official Closing Price for Exchange-listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue.⁶ In that Filing, the Exchange noted that once it implemented changes to how the Exchange determines the Official Closing Price, the Exchange “will disseminate to the SIP the Official Closing Price as an “M” value.”⁷

With this proposed rule change, the Exchange is modifying this statement to

⁵ For example, under Rule 123C(1)(e)(i) - Equities, if there were no closing transaction in a security or if a closing transaction is less than one round lot, the Exchange’s Official Closing Price will be the most recent last-sale eligible trade on the Exchange in such security on that trading day. By contrast, on NYSE Arca, Inc., under the same circumstances, the Official Closing Price will be the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. See NYSE Arca Equities, Inc. Rule 1.1(gg)(1)(A).

⁶ See Securities Exchange Act Release Nos. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR-NYSEMKT-2016-31; SR-NYSE-2016-18) (Approval Order) and 77306 (March 7, 2016), 81 FR 12986 (March 11, 2016) (Notice of Filing).

⁷ See id. at 12986. See also Securities Exchange Act Release No. 76601 (December 9, 2015), 80 FR 77680 (December 15, 2015) (SR-NYSEMKT-2015-98) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to define the term “Official Closing Price”).

permit, but not require, the Exchange to report a price with an “M” sale condition to the SIP when the Official Closing Price is determined under Rule 123C(1)(e)(i) - Equities. Specifically, the Exchange does not believe that it should publish an Official Closing Price to the SIP as an “M” value if there has not been a last-sale eligible trade in a security on a trading day. For example, based on feedback from industry participants, the Exchange understands that certain market participants, such as index providers and mutual funds, follow a different method of determining a security’s closing price when there have not been any last-sale eligible trades on a trading day. Under these circumstances, the Exchange understands that an Official Closing Price reported to the SIP as an “M” sale condition that differs from how an industry market participant may determine such value for its own purposes could lead to confusion if a market participant’s systems read the “M” value published by the SIP that differs from their calculation.

Accordingly, this proposed rule change is intended to provide that the Exchange’s would not be required to publish an Official Closing Price, as defined in Rule 123C(1)(e)(i) - Equities, as an “M” sale condition to the SIP. And, as noted above, this proposed rule change would not alter how the Official Closing Price would be disseminated under Rules 123C(1)(e)(ii) – (iv) - Equities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

particular, in that it is 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.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency that the Exchange's is not required to report a price to the SIP as an "M" sale condition. The Exchange believes that the proposed rule change is consistent with the Act because the "M" sale condition does not contribute to the consolidated last sale price for a security, the high or low price of a security, or reported volume for a security, and therefore is an informational value. The Exchange further believes that this proposed rule change is consistent with the protection of investors and the public interest because it would reduce confusion by eliminating publication to the SIP of a price that may conflict with how an index provider or mutual fund determines that value for a security if there are no last-sale eligible trades on a trading day. Finally, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would apply only when the Exchange is fully operational. If the Exchange is unable to conduct a closing transaction due to a systems or technical issue, current Rule 123C(1)(ii) – (iv) - Equities would govern, with no change.

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 designed to address any competitive issues, but rather to specify that the Exchange would not be required to report an Official Closing Price to the SIP as an “M” sale condition if there has not been a last-sale eligible trade on a trading day.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 believes that waiving the operative delay would be consistent with the protection of investors and the public interest because it would make transparent that the Exchange would not report an “M” sale condition to the SIP for a security if there has not been a last-sale eligible trade on a trading day. The Exchange further believes that the proposed rule change is consistent with the protection of investors and the public interest because it would not change how an Official Closing Price would be disseminated under Exchange Rule 123C(1)(e)(ii) – (iv) - Equities. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest because it clarifies the Exchange’s reporting practices while maintaining its procedures for disseminating an Official Closing Price. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

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

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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)¹⁵ 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. Please include File Number SR-NYSEMKT-2016-104 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-2016-104. 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

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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-2016-104 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.¹⁶

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).