

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70099; File No. SR-NYSE-2013-54)

August 2, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend NYSE Rule 49, Which Addresses the Exchange's Emergency Powers

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, New York Stock Exchange LLC ("NYSE" 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 amend NYSE Rule 49, which addresses the Exchange's Emergency Powers. 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 49, which addresses the Exchange’s emergency powers. As explained in more detail below, the proposed rule change would amend Rule 49 to better delineate the self-regulatory organization (“SRO”) functions of the Exchange and NYSE Arca, Inc. (“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.

Current Rule

In 2009, the Exchange adopted Rule 49 to provide the Exchange with the authority to declare an emergency condition⁴ with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.⁵ The authority in Rule 49 may be exercised when, due to an emergency condition, the Exchange’s

⁴ 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).

⁵ See Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR-NYSE-2009-105).

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 Exchange officer may designate NYSE Arca, the Exchange's affiliate, to serve as a backup facility to receive and process bids and offers and to execute orders on behalf of the Exchange so that the Exchange, as an SRO, can remain operational.⁶ During such an emergency condition, NYSE Arca also would continue to operate simultaneously. To date, the Exchange has not invoked the rule.

Under Rule 49, during the emergency condition, the Exchange would halt all trading conducted on the Exchange's systems and facilities. Unexecuted orders would remain on the Exchange's systems unless cancelled. The Exchange would open trading on the systems and facilities of NYSE Arca as soon thereafter as possible, but not earlier than at least the next trading day. As soon as practicable following the commencement of trading on the systems and facilities of NYSE Arca, any unexecuted orders would be purged from the Exchange's own systems and facilities.

Quotes or orders of Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System ("CQS") as bids and offers, or to the Consolidated Tape Association ("CTA") as executions, made on or through the systems and facilities of the Exchange, not NYSE Arca. Members and member organizations would be required to have contingency plans for changing the routing instructions for their order entry systems and to take such other appropriate actions as instructed

⁶ 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 NYSE Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

by the Exchange to accommodate the use of the systems and facilities of NYSE Arca to trade Exchange-listed securities.

Exchange members, member organizations and Sponsored Participants would be permitted to enter bids and offers and to execute orders on or through the systems and facilities of NYSE Arca, regardless of whether they were members or sponsored participants of NYSE Arca at the time the emergency condition was declared. Such bids and offers would be deemed to be bids and offers of the Exchange. Exchange member organizations registered as Designated Market Makers (“DMMs”) that were designated as temporary members of NYSE Arca in accordance with NYSE Arca Equities Rules would, for the duration of such designation, not be considered DMMs for the purposes of the Exchange’s rules but rather “Market Makers” pursuant to NYSE Arca Equities rules for the purposes of trading Exchange-listed securities on and through the systems and facilities of NYSE Arca. The Exchange would, as needed, designate any NYSE Arca members that were not members or member organizations of the Exchange at the time of the emergency condition as temporary members. Such temporary members would not be required to meet any of the Exchange’s membership requirements. The Exchange also would, as needed, authorize sponsored participants of NYSE Arca that did not have sponsored access to the Exchange for temporary access through either an existing Exchange member or member organization or an NYSE Arca member granted temporary membership under Rule 49. Temporary memberships or access under the rule would be valid only until regular trading resumed on the Exchange’s systems and facilities, including the Trading Floor.

All trades of Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to the NYSE Arca Equities Rules governing trading, and such rules would be considered Exchange rules for the purposes of such

transactions, except that (i) the Exchange's rules governing member firm conduct would continue to apply to its members, member organizations and Sponsored Participants, including, but not limited to, membership requirements and net capital requirements, and (ii) the Exchange's listing requirements for its listed securities would continue to apply.

Surveillance of trading of Exchange-listed securities on or through the systems and facilities of NYSE Arca would be conducted by NYSE Arca on behalf of the Exchange. Members and member organizations of the Exchange would remain subject to the jurisdiction of the Exchange for any disciplinary actions related to the trading of Exchange-listed securities on or through the systems and facilities of NYSE Arca. Violations of the rules of NYSE Arca would be referred to the Exchange for prosecution according to the Exchange's disciplinary rules. Exchange members and member organizations could not assert as an affirmative defense to such prosecution the lack of jurisdiction of the Exchange over trading of Exchange-listed securities on or through the systems and facilities of NYSE Arca.

Events During Superstorm Sandy

On October 29 and 30, 2012, due to the dangerous conditions that developed as a result of Superstorm Sandy, NYSE and NYSE MKT LLC ("NYSE MKT"), 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.

Proposed Rule Change

The Exchange proposes to amend 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. As described above, the current rule contemplates the Exchange remaining operational during the emergency condition and both the Exchange and NYSE Arca performing certain SRO functions with respect to the same trading activity that would be taking place on NYSE Arca. The Exchange 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 the Exchange, 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. The specific amendments to achieve these results are described in more detail below.

Rule 49(a)(1) would be amended to provide a short form of the term "Emergency Condition," which is strictly a technical amendment to simplify the remainder of the rule text, and to specify that NYSE Arca may perform certain functions on behalf and at the direction of the Exchange.

Rule 49(a)(2) would be amended to remove a reference to the Exchange's systems and facilities, including the Trading Floor, continuing to operate during the Emergency Condition.

The text would be revised to provide that an Emergency Condition declaration may be made if necessary so that the securities markets, in general, may continue to operate and trading in Exchange-listed securities, in particular, may continue to occur in a manner consistent with the protection of investors and in pursuit of the public interest. In Rule 49(a)(3), the subparagraphs would be redesignated so that the rule text follows a consistent convention.⁷

Rules 49(b)(1) and 49(b)(2)(i), which include text describing how the Exchange would halt trading and NYSE Arca would begin receiving and processing bids and offers and executing orders on behalf of the Exchange beginning on the next trading day, would be deleted and replaced with text that more specifically describes the steps that each SRO would take upon the declaration of the Emergency Condition. Proposed Rule 49(b)(1) would provide that when an Emergency Condition is declared, 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.

Proposed Rule 49(b)(2) would provide that beginning on the next trading day following the declaration of the Emergency Condition,⁸ 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 CTA, and (B) notifications to CQS for Exchange-listed securities of (i) regulatory halts and resumption of

⁷ The Exchange notes that there is a pending amendment to subparagraph (a)(3)(ii). See Securities Exchange Act Release No. 69851 (June 25, 2013), 78 FR 39407 (July 1, 2013) (SR-NYSE-2013-42).

⁸ 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.

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”).⁹

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 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 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 change 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.¹⁰ This 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 “N” executions. 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 “N” 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

⁹ See NYSE Rules 123D, 80B, 80C, and 440B. Each of these types of notifications is a responsibility of the primary listing market for the security.

¹⁰ The “P” designation reflects one of NYSE Arca’s predecessor names, Pacific Exchange, Inc., before it was purchased by NYSE Euronext.

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, NYSE Arca would disseminate the official opening and closing prints for NYSE-listed securities and primary listing market notifications with both “P” and “N” 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.¹¹ 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 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 “N” messages and not have to engage in any system reprogramming to receive them.

Rule 49(b)(2)(iii) currently provides that members and member organizations must have contingency plans for changing the routing instructions for their order entry systems, and to take

¹¹ Nonetheless, NYSE will remain the SRO that is legally responsible for the notifications.

such other appropriate actions as instructed by the Exchange, to accommodate the use of the systems and facilities of NYSE Arca to trade Exchange-listed securities. The proposed rule change would redesignate this provision as Rule 49(b)(3) and amend the text to provide that 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 route quotes and orders in Exchange-listed securities to NYSE Arca. This is the manner by which the current rule operates, but this level of detail was previously provided in communications with the industry rather than in the rule.¹² Such connectivity and routing could be established either directly to NYSE Arca by becoming an ETP Holder or through a third party, such as a service bureau, that is an ETP Holder. The Exchange would not have the ability to reroute such quotes and orders from NYSE to NYSE Arca on behalf of members and member organizations, as noted in proposed Rule 49(b)(1)(A). The proposed rule change would also delete text stating that the Exchange would provide instructions to members and member organizations about using NYSE Arca facilities because this would be unnecessary.

Current Rule 49(b)(3), which provides for certain temporary memberships and would deem Exchange DMMs that are designated as temporary members of NYSE Arca as NYSE Arca Market Makers, would be deleted in its entirety. Because all trading would occur under the NYSE Arca SRO via a direct membership as an ETP Holder or indirectly via a service bureau as described above, temporary memberships would be unnecessary. Upon further review, the Exchange has also determined that there would be substantial technological difficulties for NYSE DMMs to become established during the Emergency Condition as NYSE Arca Market

¹² See NYSE Regulation Information Memo 10-14 (March 15, 2010), available at [http://www.nyse.com/nyse/nyse/nyse/information-memos/detail?memo_id=10-14](http://www.nyse.com/nyse/nyse/nyse/nyse/information-memos/detail?memo_id=10-14).

Makers and comply with NYSE Arca Equities Rule 7.23 quoting obligations, as amended in 2011.¹³ It also would be technologically impracticable to attempt to impose NYSE's DMM requirements in a different market and inconsistent with the structure of the proposed rule change. If an Exchange DMM wanted to be able to act as an NYSE Arca Market Maker during the Emergency Condition, it would have to apply for and obtain such status in advance.

Current Rule 49(b)(4) states that NYSE Arca trading rules would apply to all trading on NYSE Arca during the emergency condition and would be deemed Exchange rules. Under the proposed rule change, this text would be deleted and such trading rules would no longer be deemed Exchange rules. To better delineate each SRO's authority, and for simplicity and clarity, during an Emergency Condition, all trading in NYSE-listed securities on NYSE Arca would be subject to NYSE Arca rules, surveillance, and discipline; as such, current Rule 49(b)(5) would be deleted. NYSE Arca would not be acting on behalf of the Exchange, but rather under its own SRO authority. Thus, if an NYSE member organization violated an NYSE Arca trading rule while trading on NYSE Arca during an Emergency Condition, it would be subject to discipline by NYSE Arca, not the Exchange. The proposed rule change also would specify that such NYSE Arca trading rules include, but are not limited to, the opening, reopening, 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. NYSE Arca's auction processes at the open and close and following a trading halt differ from those of NYSE. However, NYSE's listing requirements would continue to apply to any Exchange-listed security that was trading on NYSE Arca during the Emergency Condition.

The Exchange also proposes to make typographical corrections to Rule 49(c).

¹³ See Securities Exchange Act Release No. 64422 (May 6, 2011), 76 FR 27691 (May 12, 2011) (SR-NYSEArca-2011-26).

The Exchange notes that its affiliates have submitted related rule filings. NYSE Arca has submitted a companion filing to make its authority consistent with proposed Rule 49.¹⁴ NYSE MKT also has submitted a filing to adopt the text of Rule 49, as amended by this filing.¹⁵

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.

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

¹⁴ See SR-NYSEArca-2013-77.

¹⁵ See SR-NYSEMKT-2013-66.

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."

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-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. Although market making requirements could not feasibly be imposed on NYSE DMMs trading on NYSE Arca during 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 better delineating SRO surveillance and disciplinary functions. The Exchange believes that it would be more effective for NYSE Arca to discipline NYSE members and member organizations under NYSE Arca rules rather than having the Exchange enforce NYSE Arca rules.

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 and remove certain requirements that cannot feasibly be imposed. 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-NYSE-2013-54 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- NYSE-2013-54. 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- NYSE-2013-54 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).