

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78512; File No. SR-NYSE-2016-53)

August 9, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123D Relating to When a DMM may Reopen a Security Electronically

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 28, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 Rule 123D relating to when a DMM may reopen a security electronically. 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> 15 U.S.C. 78a.

<sup>3</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 Rule 123D relating to when a DMM may reopen a security electronically. The proposed rule changes would provide greater specificity regarding the applicable reference price for determining when a DMM may effect a reopening transaction electronically.

Background

The Exchange recently amended Rule 123D to specify when DMMs may effect an opening of a security electronically.<sup>4</sup> Rule 123D(a)(1)(B) provides that openings may be effectuated manually or electronically (as provided for in Rule 104(b)(ii)) and that Exchange systems will not permit a DMM to open a security electronically if a DMM has manually entered Floor interest. Rule 123D(a)(1)(B)(i) further provides that, except under the conditions set forth in paragraph (a)(1)(B)(ii) of Rule 123D, a DMM may not effect an opening electronically if the opening transaction will be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e), or the matched volume will be more than: (a) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or (b) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter.

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<sup>4</sup> See Securities Exchange Act Release Nos. 78228 (July 5, 2016), 81 FR 44907 (July 11, 2016) (SR-NYSE-2016-24) (Approval Order) and 77491 (March 31, 2016), 81 FR 20030 (April 6, 2016) (SR-NYSE-2016-24) (Notice of Filing) (“Opening Filing”).

Rule 123D(a)(1)(B)(ii) provides that if as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening electronically if the opening transaction will be at a price of up to 8% away from the Official Closing Price, as defined in Rule 123C(1)(e), without any volume limitations. The current rule is silent on the reference price for when a DMM may effect a reopening of a security electronically.

#### Proposed Rule Change

The Exchange proposes to amend Rule 123D(a)(1) to provide for how the Exchange would determine when a DMM may effect a reopening of a security electronically. First, because Rule 123D(a)(1) is applicable to reopenings, the Exchange proposes to add to Rule 123D(a) that unless otherwise specified, references to an open or opening in Rule 123D(a) also mean a reopening following a trading halt or pause in a security. This proposed rule text is based on the last sentence of Rule 123D(a)(2).<sup>5</sup> As proposed, this text would be applicable to Rules 123D(a)(1) and (a)(2) in addition to Rules 123D(a)(3) –(6), as currently provided for in Rule 123D(a)(2). The Exchange proposes to delete the last sentence of Rule 123D(a)(2) as duplicative of the proposed new rule text.

Second, because Rule 123D has always governed the reopening process, in addition to the opening process, the Exchange proposes to add language to paragraph (1) of Rule 123D(a) to provide for DMM responsibilities regarding the reopening process. As proposed, Rule

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<sup>5</sup> See Rule 123D(a)(2) (“Unless otherwise specified, references to an open or opening in paragraphs (a)(3) – (a)(6) of this Rule also mean a reopening following a trading halt or pause.”). See also Supplementary Material .10 to Rule 15 (“Unless otherwise specified in this Rule, references to an opening transaction include a reopening transaction following a trading halt or pause in a security.”)

123D(a)(1) would explicitly state that it is the responsibility of each DMM to ensure that registered securities open as close to the end of a halt or pause, while at the same time not unduly hasty, particularly when at a price disparity from the last price on the Exchange.

Third, the Exchange proposes to amend Rule 123D(a)(1)(B)(i) to provide for the reference price that the Exchange would use to determine whether a DMM may effect a reopening electronically. As proposed, a DMM may not effect a reopening electronically if the reopening transaction would be at a price more than 4% away from the last price on the Exchange, rather than 4% away from the Official Closing Price. The Exchange also proposes to specify that the Official Closing Price would be used as the reference price for openings, but not reopenings.

The Exchange believes that when reopening a security, the Official Closing Price from the prior day would no longer be a relevant reference price because the security has already opened for trading. Rather, because the security has been subject to a halt or pause before reopening, the Exchange believes that using the last sale price on the Exchange would be more representative of the most recent price of a security. A reopening price that would be more than 4% away from the last Exchange sale price demonstrates a level of price movement in a security during the halt or pause that warrants the manual price discovery process for the reopening. If the reopening price were to be within 4% away from the last Exchange sale price, that security likely has not experienced as much price movement, and therefore an electronic reopening may be more appropriate.

To effect this proposed rule change, the Exchange proposes to break current Rule 123D(a)(1)(B)(i) into subsections in order to specify the applicable parameters for determining whether to open or reopen a security electronically. The proposed amended rule text would

provide (new text underlined, deletions bracketed):

(i) Except under the conditions set forth in paragraphs (a)(1)(B)(ii) and (iii) of this

Rule, a DMM may not effect an opening electronically if:

(a) the opening (but not reopening) transaction will be at a price more than 4%

away from the Official Closing Price, as defined in Rule 123C(1)(e),

(b) the reopening transaction will be at a price more than 4% away from the last

price on the Exchange, or

(c) the matched volume for the opening transaction will be more than:

[(a)](1) 150,000 shares for securities with an average opening volume of

100,000 shares or fewer in the previous calendar quarter; or

[(b)](2) 500,000 shares for securities with an average opening volume of over

100,000 shares in the previous calendar quarter.

Fourth, the Exchange proposes to amend Rule 123D(a)(1)(B)(ii) to similarly provide that the reference price that the Exchange would use to determine whether a DMM may effect a reopening electronically on more volatile trading days would be based on the last sale price on the Exchange.<sup>6</sup> The proposed amended rule text would provide (new text underlined):

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<sup>6</sup> The first clause of Rule 123D(a)(1)(B)(ii) specifically governs assessing volatility before the opening of trading i.e., assessing volatility based on the E-mini S&P 500 Futures before 9:00 a.m. Eastern Time to determine whether to widen the opening parameters. Based on the proposed changes to Rule 123D(a), discussed above, to specify that reference to the opening also refers to a reopening, the second clause of the current rule, i.e., that the Exchange may widen the opening parameters if it determines that it is necessary or appropriate for the maintenance of a fair and orderly market, would also apply to reopenings. For example, during a market-wide halt under Rule 80B, the futures markets may also halt trading in related securities. However, because of the market-wide volatility that triggered such halt, the Exchange may determine that it is appropriate to widen the parameters for when a DMM may effect a reopening electronically, even in the absence of a benchmark index to measure volatility.

(ii) If as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening electronically if the opening transaction will be at a price of up to 8% away from the Official Closing Price, as defined in Rule 123C(1)(e), (for openings, but not reopenings) or the last sale price on the Exchange (for reopenings), without any volume limitations.<sup>7</sup>

Finally, the Exchange proposes to add new Rule 123D(a)(1)(B)(iii) to specify the reference price that the Exchange would use when reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B *and* a pre-opening indication has been published in a security under Rule 15. As proposed, under such circumstances, a DMM may not reopen such security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication. The Exchange believes that because price volatility was likely the cause of such trading pause or halt, if the DMM publishes a pre-opening indication in a security for a reopening following such trading pause or halt, the reopening price should be within such pre-opening indication price range, regardless of whether the security is reopened manually or electronically. If the price moves away from the last pre-opening indication, the DMM should publish a new pre-opening indication to provide notice of the new price range.<sup>8</sup> Because the DMM would need to reopen a security within such price indication range, the Exchange believes it is appropriate to prohibit a DMM from reopening electronically if the

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<sup>7</sup> The Exchange proposes a non-substantive, technical amendment to change the phrase “fair and order market” to provide instead “fair and orderly market” in Rule 123D(a)(1)(B)(ii).

<sup>8</sup> See Rule 15(e)(2) (a pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication).

reopening price were to be outside of the last-published pre-opening indication. The proposed new rule text would provide (new text underlined):

(iii) When reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B, if a pre-opening indication has been published in a security under Rule 15, a DMM may not reopen such security electronically if the reopening transaction will be at a price outside of the last-published pre-opening indication.

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Because of the technology changes associated with the proposed rule change, the Exchange will announce by Trader Update the implementation date of the changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that amending Rule 123D(a) to specify that unless otherwise provided, all of Rule 123D(a) is applicable to both openings and reopenings would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency regarding the scope of the rule. The proposed change is also consistent with current Rule 123D(a)(2) and Supplementary Material .10 to Rule 15, which similarly

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

provide that references to an opening also refers to a reopening, unless otherwise specified.

The Exchange further believes that amending Rule 123D to specify when a DMM may effect a reopening electronically would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting transparency in Exchange rules regarding under what circumstances a DMM may effect a reopening electronically. The Exchange believes that using the last Exchange sale price as a reference price would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because using the last sale price on the Exchange would be more representative of the most recent price of a security from before the halt or pause. In addition, the Exchange believes that if a security were to reopen more than 4% (or 8% on a more volatile trading day) from that reference price, such reopening would likely benefit from the manual price discovery process. The Exchange further believes that it would remove impediments to and perfect the mechanism of a free and open market to double the parameters for when a DMM may reopen a security electronically if the Exchange believes that it is necessary or appropriate for the maintenance of a fair and orderly reopening of a security.

The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market to provide that a DMM may reopen a security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication when reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B and a pre-opening indication has been published under Rule 15. Finally, the Exchange believes that the proposal would advance the efficiency and transparency of the reopening process, thereby fostering accurate price discovery at the reopen of

trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

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 intended to address competitive issues but rather promote greater efficiency and transparency at the reopen of trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will provide clarification to its updated Disaster Recovery Plan, which has been filed with the Commission. The Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2016-53 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-NYSE-2016-53. 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-NYSE-2016-53, 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>17</sup>

Robert W. Errett  
Deputy Secretary

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