

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68244; File No. SR-NYSEMKT-2012-63)

November 15, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 123C - Equities To Add New Supplementary Material .40 To Clarify That All Times Specified in Rule 123C - Equities are Adjusted When the Scheduled Close of Trading is Before 4:00 p.m.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 6, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Item I below, which Item has been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 MKT Rule 123C - Equities to add new Supplementary Material .40 to clarify that all times specified in Rule 123C - Equities are adjusted when the scheduled close of trading is before 4:00 p.m. The text of 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.

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

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

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

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

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 proposes to amend NYSE MKT Rule 123C – Equities (“Rule 123C”) to add new Supplementary Material .40 to clarify that all times specified in Rule 123C are adjusted when the scheduled close of trading is before 4:00 p.m.<sup>5</sup>

Pursuant to Rule 51, except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for the transaction of business on every business day for a 9:30 a.m. to 4:00 p.m. trading session. Each year, the Exchange announces which trading days shall have an early scheduled close. For example, for the years 2012, 2013, and 2014, the Exchange has announced an early scheduled close of 1:00 p.m. for the day after Thanksgiving, on December 24, and on July 3.<sup>6</sup>

Rule 123C specifies a number of times that are keyed off of the 4:00 p.m. closing time. For example, Rule 123C(1)(b) defines an Informational Imbalance Publication that is disseminated between 3:00 p.m. and 3:45 p.m.; Rule 123C(2) discusses order entry for MOC,

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<sup>5</sup> The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC. See SR-NYSE-2012-62.

<sup>6</sup> See <http://usequities.nyx.com/markets/holidays-and-hours/nyse>.

LOC, and CO Orders before and after 3:45 p.m. However, these sections of the rule do not specify what happens in the case of an early scheduled close. Some subsections of Rule 123C specify what time is applicable when there is an early scheduled close. For example, Rule 123C(6)(a)(v) specifies that on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m., the dissemination of Order Imbalance Information prior to the closing transaction will commence approximately 15 minutes before the scheduled close of trading.

The Exchange notes that even if not specified, all times in Rule 123C are adjusted when there is an early scheduled close. Accordingly, the Exchange proposes to add new Supplementary Material .40 to Rule 123C to clarify that if not otherwise specified, when the scheduled close of trading is before 4:00 p.m., the times specified in the Rule shall be adjusted based on the early scheduled closing time and references to 4:00 p.m. shall mean the early scheduled close, 3:00 p.m. shall mean one hour before the early scheduled close, 3:45 p.m. shall mean 15 minutes before the early scheduled close, 3:55 p.m. shall mean five minutes before the early scheduled close, and 3:58 p.m. shall mean two minutes before the early scheduled close.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in 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, 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 it is not designed to permit unfair discrimination among customers, brokers,

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

or dealers. In particular, the Exchange believes that adding new Supplementary Material .40 to clarify that all times specified in Rule 123C are adjusted in the case of an early scheduled close removes impediments to and perfects the mechanism of a free and open market and national market system because it provides transparency in Exchange rules of how times are adjusted in Rule 123C in the case of an early scheduled close.

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.

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 does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

The Exchange asked the Commission to waive the 30-day operative delay period for non-controversial proposed rule changes to allow the proposed rule change to be operative upon filing.<sup>11</sup>

The Commission believes it is consistent with the public interest to waive the 30-day operative delay. Waiver of the operative delay will allow for the implementation of the amended rules prior to the next early scheduled close, November 23, 2012, which is the day after Thanksgiving, thereby providing additional clarity in the rules and reduce any potential confusion regarding how the times specified in Rule 123C are handled when there is an early scheduled close. The Commission, therefore, grants such waiver and designates the proposal operative upon filing.<sup>12</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.

#### 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>11</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

<sup>12</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).

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-2012-63 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-2012-63. 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 such 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-2012-63 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 C.F.R. 200.30-3(a)(12).