

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73029; File No. SR-NYSEMKT-2014-75)

September 9, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 49 – Equities, Which Addresses the Exchange’s Emergency Powers Revising How Certain Messages are Disseminated

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 27, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 to amend Rule 49 – Equities, which addresses the Exchange’s emergency powers, to revise how certain messages are disseminated. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 49 – Equities, which addresses the Exchange’s emergency powers, to revise how certain messages are disseminated.

Background

In 2013, the Exchange adopted Rule 49 – Equities, based on already-existing New York Stock Exchange (“NYSE”) Rule 49 to provide the Exchange with the authority to declare an Emergency Condition 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.⁴ The Exchange adopted Rule 49 – Equities based on corresponding NYSE Rule 49 to align its authority with its affiliates and mitigate the possibility of having to close in the event of a future emergency condition.⁵ The authority in Rule 49 – Equities may be exercised when, due to an

⁴ See Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR-NYSE-2013-54; SR-NYSEMKT-2013-66; SR-NYSEArca-2013-77). This release approved the Exchange’s adoption of Rule 49 – Equities as well as amendments to already-existing NYSE Rule 49.

⁵ See Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR-NYSE-2009-105). See also SR-NYSE-2013-54, *supra* note 3. Under current Rule 49 – Equities, an “Emergency Condition” means an emergency as defined in Section 12(k)(7) of the Act, which is “(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

Emergency Condition, the Exchange’s systems and facilities located at 11 Wall Street, New York, New York, including the NYSE MKT Trading Floor, cannot be utilized. If such an Emergency Condition is declared, a qualified Exchange officer may designate NYSE Arca, Inc. (“NYSE Arca”) the Exchange’s affiliate, to serve as a backup facility so that the Exchange, as a self-regulatory organization (“SRO”), can remain operational.⁶ NYSE Arca also would continue to operate simultaneously. In approving Rule 49 – Equities, the Securities and Exchange Commission (“Commission”) approved text, based on a corresponding amendment to NYSE Rule 49, that was designed 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 structure of member organization connectivity to and system coding for exchange systems.⁷ To date, the Exchange has not invoked Rule 49 – Equities.

Under current Rule 49(b)(2)(A) – Equities, beginning on the next trading day following the declaration of an Emergency Condition, NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate (i) the official opening, re-opening, and closing trades of Exchange-listed securities to the Consolidated Tape as messages of the Exchange, and (ii) any notification for Exchange-listed securities to the Consolidated Quotation System (“CQS”) of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading

portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions.” 15 U.S.C. § 78l(k)(7).

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

⁷ See supra note 4.

thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of both the Exchange and NYSE Arca.

Under current Rule 49(b)(2)(B) – Equities, bids and offers for Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the CQS as bids and offers of NYSE Arca, except that the opening quote and any re-opening quote would be reported to the CQS as a bid and/or offer of both the Exchange and NYSE Arca. Bids and offers for Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing auctions, which would be reported as Exchange executions and Exchange volume only.

Proposed Rule Change

After further review, the Exchange has determined that it is not feasible for certain notifications that are disseminated via CQS to be disseminated as messages of both the Exchange and NYSE Arca. Specifically, CQS can only process notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting from a single market. Because the Exchange is the primary market for NYSE MKT-listed securities, the Exchange believes that it is more appropriate to continue to disseminate these notifications as NYSE MKT market messages during an Emergency Condition. As such, the Exchange proposes to amend Rule 49(b)(2)(A)(ii) – Equities so that the messages would only be disseminated as NYSE MKT messages.

For similar reasons, CQS supports dissemination of re-opening quote messages from only a single market. Specifically, in order to support a re-opening quote, a single market must

disseminate a “resume” trading message, which then signals CQS to accept and display quotes from all other markets. Because the Exchange is the primary market for NYSE MKT-listed securities, the Exchange believes it is appropriate to disseminate notifications of re-opening quotes and related “resume” messages as an NYSE MKT market message during an Emergency Condition.⁸ As such, the Exchange proposes to amend Rule 49(b)(2)(B) – Equities so that any re-opening quote would only be reported to the CQS as a bid and/or offer of the Exchange.

The Exchange notes that it has conducted two tests with customers to disseminate messages as proposed.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. The proposed change will take into account CQS system limitations while still providing for the appropriate dissemination of primary market

⁸ By contrast, CQS supports the receipt of opening quotes of both the Exchange and NYSE Arca. The Exchange believes it is appropriate to disseminate the opening quote as messages of both the Exchange and NYSE Arca in order to signal to those market participants that are looking for a primary market message as a cue that NYSE MKT-listed securities are open for trading.

⁹ The Exchange conducted customer tests on September 21, 2013 and March 22, 2014. See <http://markets.nyx.com/nyse/trader-updates/view/12682> and <http://markets.nyx.com/nyse/trader-updates/view/13092>, respectively.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

messages. The Exchange believes that the proposed rule change would 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 a duplicative notification that cannot, upon further review, be feasibly achieved. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in Exchange rules of how NYSE Arca would disseminate messages on behalf of the Exchange during an Emergency Condition.

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 for 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 Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change

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 states that such waiver is consistent with the protection of investors and the public interest because it would permit the Exchange and its member organizations to more quickly adopt effective business continuity plans that will help avoid market closures in the event of an emergency, thereby maintaining liquidity for the benefit of market participants and investors generally. In support of the requested waiver, the Exchange notes that it has already successfully conducted two tests with customers to disseminate messages in the proposed manner, each time without negative results or feedback.¹⁴ Additionally, the Exchange's affiliates, NYSE and NYSE Arca, have filed similar proposals to account for these same proposed changes.¹⁵ For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁶

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

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.

¹⁴ See supra note 9.

¹⁵ See SR-NYSE-2014-48 and SR-NYSEArca-2014-96.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ 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-2014-75 on the subject line.

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-2014-75. 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 Section, 100 F

¹⁷ 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for website viewing and printing at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2014-75 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).