

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73351; File No. SR-NYSEMKT-2014-77]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15—Equities To Specify That Exchange Systems Can Publish Pre-Opening Indications and To Extend the Time Order Imbalance Information is Disseminated When an Opening is Delayed

October 15, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 6, 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 15—Equities to specify that Exchange systems can publish pre-opening indications and to extend the time order imbalance information is disseminated when an opening is delayed. The text of the proposed rule change is available on the Exchange’s Web site 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 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 15—Equities (“Rule 15”) to specify that Exchange systems can automatically publish pre-opening indications utilizing the same guidelines set forth in Rule 15 for manual publications by Designated Market Makers (“DMM”). The Exchange also proposes to amend Rule 15 to extend the time order imbalance information is disseminated when an opening is delayed from the current 9:35 a.m. to the time the security opens for trading. Finally, the Exchange proposes to correct a typographical error in subsection (b)(2) of the Rule.

Rule 15 currently provides that an Exchange DMM, in arranging an opening transaction on the Exchange in any security, shall issue a pre-opening indication whenever the DMM anticipates that the opening transaction will be at a price that represents a change of more than the “applicable price change” specified in the Rule from either:

- The security’s last reported sale price on the Exchange;<sup>4</sup> or
- the security’s offering price in the case of an initial public offering (“IPO”); or
- the security’s last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security’s first day of trading on the Exchange (a “transferred security”).<sup>5</sup>

The “applicable price changes” governing pre-opening indications represent a numerical or percentage change from the security’s closing price per share, as follows:

Exchange closing price	Applicable price change (more than)
Under \$20.00 .....	\$0.50
\$20–\$49.99 .....	\$1.00
\$50.00–\$99.99 .....	\$2.00
\$100–\$500 .....	\$5.00
Above \$500 .....	1.5%

Pre-opening indications pursuant to this rule are published on the Exchange’s proprietary data feeds.

<sup>4</sup> Except for American Depositary Receipts (“ADR”), where the DMM shall use the closing price of the primary foreign market to determine whether the price of such opening transaction represents a change of more than the “applicable price change.” See Rule 15(b).

<sup>5</sup> A pre-opening indication includes the security and the price range within which the DMM anticipates the opening transaction will occur.

The Exchange proposes to amend Rule 15 to add that either the DMM or the Exchange shall issue a pre-opening indication, but not change any of the applicable parameters for publishing a pre-opening indication. To reflect that the Exchange may be publishing these pre-opening indications, the Exchange proposes to delete the following phrase at the beginning of section (a) of the rule, “Whenever an Exchange DMM, in arranging an opening transaction on the Exchange in any security anticipates that,” and state instead that “If the opening transaction on the Exchange is anticipated to be at a price that represents a change from. . . .” The Exchange further proposes to add that the DMM or the Exchange shall issue the pre-opening indication, and specify that such pre-opening indication shall include the security and the price range within which the opening transaction is anticipated to occur.

The Exchange would publish automatic indications when the Opening Imbalance Information in Exchange systems indicates an opening price that would be more than the applicable price range away from the defined reference price. Because Exchange systems would not have access to orally-represented interest in the trading crowd, the Exchange believes that a pre-opening indication entered by a DMM would likely be based on information not available to Exchange systems, and therefore a DMM-entered pre-opening indication should have priority over an Exchange-generated pre-opening indication. Accordingly, the Exchange further proposes that if a DMM issues a pre-opening indication or a mandatory indication pursuant to Rule 123D(1)—Equities,<sup>6</sup> the Exchange would not publish a pre-opening indication in that security.

The Exchange also proposes to amend Rule 15 to permit opening order imbalance publications to continue until a security is opened. Currently, Rule 15 provides that order imbalance information disseminated prior to the opening of a security will be disseminated approximately every five minutes between 8:30 a.m. Eastern Time (“E.T.”) and 9 a.m. E.T.; approximately

<sup>6</sup> Rule 123D(1)—Equities provides that an indication is mandatory for an opening which will result in a “significant” price change from the previous close. For securities priced under \$10, such indications are mandatory if the price change is one dollar or more; for securities between \$10 and \$99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over \$100, indications are required for price movements of five dollars or more. These guidelines are applicable to IPOs based on the offering price.

<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.

every minute between 9 a.m. E.T. and 9:20 a.m. E.T.; and approximately every 15 seconds between 9:20 a.m. E.T. and the opening. If the opening is delayed, Rule 15 provides that order imbalance information will be published until 9:35 a.m. E.T. Under the proposed rule change, order imbalance information would continuously disseminate until the opening of trading in that security and not cease at 9:35 a.m. E.T.

Finally, the Exchange proposes to correct a typographical error in the published text of Rule 15(b)(2), which currently contains the word “underling” that should be “underlying.”

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</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 permitting the Exchange to automatically publish pre-opening indications and extending opening order imbalance publications until a security is opened removes impediments to and perfects the mechanism of a free and open market and a national market system by continuing to advance the efficiency and transparency of the opening process and fostering price discovery at the open of trading, thereby minimizing information imbalances in the marketplace. Similarly, the proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by providing customers and the investing public with continuous, automated information for securities where there will likely be a significant price change from the previous day's closing price or for which there is a significant published imbalance. 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 technologically augment the current process of providing pre-market information to customers and the investing public.

### *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 Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</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>11</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:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-77 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-2014-77. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://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-2014-77 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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

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

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

<sup>10</sup> 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 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.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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