

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74094; File No. SR-NYSEMKT-2015-05]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123C—Equities To Specify That Exchange Systems May Close One or More Securities Electronically If a Designated Market Maker Registered in a Security or Securities Cannot Facilitate the Close of Trading as Required by Exchange Rules

January 20, 2015.

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 January 13, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 123C—Equities to specify that Exchange systems may close one or more securities electronically if a Designated Market Maker registered in a security or securities cannot facilitate the close of trading as required by Exchange rules. 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, on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), 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 123C—Equities (“Rule 123C”) to specify that Exchange systems may close one or more securities electronically if a Designated Market Maker (“DMM”) registered in a security or securities cannot facilitate the close of trading as required by Exchange rules.

Rule 123C specifies the procedures to be followed at the close of trading on the Exchange, including procedures for the execution of closing interest, <sup>4</sup> which interest is guaranteed to participate in the closing transaction, <sup>5</sup> and the determination of the closing print(s) to be reported to the Consolidated Tape for each security. Supplementary Material .10 to Rule 123C (“Rule 123C.10”) currently provides that closings may be effectuated manually or electronically. However, the current rule contemplates that closings would be facilitated by the DMM, as provided for in Rule 104(a)(3)—Equities.

The Exchange proposes to amend Rule 123C.10 to provide that, if a DMM cannot facilitate the close of trading for one or more securities for which the DMM is registered, the Exchange would close those securities electronically. <sup>6</sup> Unlike DMMs, who have the obligation to trade for their own account to supply liquidity as needed to facilitate the close, <sup>7</sup> the Exchange would not supply any liquidity when effectuating an electronic close. Without the addition of liquidity to offset an imbalance, the closing price may not be reasonably related to the last sale. To avoid closing at a price too far away from the last sale, the Exchange proposes to establish numerical guidelines to provide

parameters regarding the price a security may close when the Exchange closes such security.

As proposed, the closing price of a security closed by the Exchange would not be greater than or less than the last sale price on the Exchange (the “Reference Price”) by an amount within the Closing Numerical Guidelines set forth below:

Reference Price	Closing Numerical Guideline (Closing Price % Difference from the Reference Price)
Greater than \$0.00 up to and including \$25.00 .....	10
Greater than \$25.00 up to and including \$50.00 .....	5
Greater than \$50.00 .....	3

The proposed numerical guidelines are the same as those currently utilized in determining whether an execution qualifies as clearly erroneous under Rule 128—Equities. <sup>8</sup> The Exchange believes that using the same guidelines when the Exchange closes a security electronically is appropriate because it would reduce the potential for the closing price on the Exchange to be considered erroneous.

Further, the Exchange proposes to amend Rule 123C.10 to specify the eligible interest to be considered in an Exchange electronic close. Specifically, as proposed, no manually-entered Floor interest would participate in an Exchange electronic close, and if previously entered, would be ignored. <sup>9</sup> Further, in performing a close under the proposed rule, the Exchange would consider all interest eligible to trade in the close consistent with Rule 123C(7) <sup>10</sup>

<sup>8</sup> Rule 128—Equities defines a clearly erroneous execution as an execution with an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. Under the numerical guidelines set forth in Rule 128—Equities, an execution may be found to be clearly erroneous only if the price of the transaction to buy is greater, or less in the case of a sale, than the reference price by an amount that equals or exceeds the numerical guidelines for a particular transaction category. In determining whether an execution is clearly erroneous, the Exchange generally utilizes the consolidated last sale as the Reference Price.

<sup>9</sup> Manually-entered Floor interest includes interest entered by the DMM on behalf of a Floor broker and the DMM interest entered manually. The Exchange notes that, under regular trading conditions, if manually-entered Floor interest has been entered into Exchange systems, Exchange systems will not permit a DMM to close a stock electronically and the DMM would instead be required to close the security manually. The Exchange proposes to make this explicit in the text of Supplementary Material .10.

<sup>10</sup> Rule 123C(7)(a) sets forth the interest that must be executed or cancelled as part of the closing

<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.

<sup>4</sup> See Rule 123C(7) (Order of Execution at the Close). Rule 123C(7)(a) specifies the type of interest that must be executed in whole or in part in the closing transaction, and the allocation order of such interest.

<sup>5</sup> See Rule 123C(8).

<sup>6</sup> The proposed amendment contemplates that a DMM’s inability to close securities either manually or electronically would be related to business continuity disruptions such as the physical closing of the Exchange Trading Floor or equipment and connectivity breakdowns that prevent the DMM from closing a security either manually or electronically. When a DMM is unable to close securities manually or electronically, the DMM’s affirmative obligations under Rule 104 would not apply.

<sup>7</sup> See Rule 104(a)(3)—Equities and 104(f)(iii)—Equities.

and 123C(8)(a).<sup>11</sup> Under no circumstances, however, would the Exchange close a security if the closing price would be greater than or less than the Reference Price by an amount outside the Closing Numerical Guidelines. Accordingly, interest specified in Rule 123C(7)(a) would not participate in a closing trade if such interest would cause a closing price to be outside the Closing Numerical Guidelines.

The proposed rule would also specify that the provisions of Rule 123C(9)(a)(1) and 123C(9)(b) would be suspended if the Exchange closes a security electronically. Rule 123C(9)(a)(1) permits the Exchange, on a security-by-security basis, to temporarily suspend the hours of operation under Rule 52—Equities so that offsetting interest may be solicited from both on-Floor and off-Floor participants and entered after 4:00 p.m. ET to reduce the size of the imbalance. Rule 123C(9)(b) specifies that only the DMM may request the temporary suspensions available under Rule 123C(9)(a). As proposed, if the Exchange closes a security electronically, the assigned DMM would not have the authority to invoke Rule 123C(9)(a)(1).

Similarly, the proposed rule would specify that only the Exchange would be able to invoke Rule 123C(9)(a)(2) if the Exchange closes a security electronically. Rule 123C(9)(a)(2) permits temporary suspensions of the prohibition on the cancellation or reduction of a Market on Close (“MOC”)/Limit on Close (“LOC”) order after 3:58 p.m. where there is a legitimate error in such an order and execution of the order would cause significant price dislocation at the close. Only the assigned DMM can request relief under Rule 123C(9)(a)(2). Under the proposed rule, in an electronic close by the Exchange, Rule 123C(9)(a)(2) would be in effect but the assigned DMM would not have authority to temporarily suspend cancellation; only the Exchange would be able to invoke a temporary suspension under the rule.

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

transaction as well as the order of execution. Rule 123C(7)(b) sets forth the interest that may be used to offset a closing imbalance and the order of execution (*i.e.*, interest that is not guaranteed to participate in the closing transaction).

<sup>11</sup> Rule 123C(8) governs printing of the closing transaction where there is an order imbalance (Rule 123C(8)(a)) and where there is no order imbalance (Rule 123C(8)(b)).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</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 close trading would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring an orderly close if the registered DMM cannot manually or electronically facilitate the close of trading as required by Exchange rules. 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 the certainty of a close in circumstances where business continuity disruptions or other emergencies would prevent the assigned DMMs from closing a security. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that the proposed amendment to Rule 123C.10 to provide that closings effectuated by the Exchange would be within a proposed numerical guideline would remove impediments to and perfect the mechanism of a free and open market because having such guidelines provides transparency regarding the range of potential prices that a security may close in such scenario. The Exchange further believes that the proposed numerical guidelines, which are based on existing guidelines for clearly erroneous executions, would remove impediments to and perfect the mechanism of a fair and orderly market because in the absence of a DMM supplying liquidity, the proposed guidelines would reduce the possibility for closing prices to be executed at potentially erroneous prices, thereby protecting investors and the public. Similarly, the Exchange believes that excluding interest eligible for the close that would cause an execution to occur outside the proposed numerical guidelines, even if such interest would otherwise be required to be included in

a close effectuated by a DMM, and permitting the Exchange to cancel or reduce an MOC/LOC order after 3:58 p.m. where there is a legitimate error and execution of the order would cause significant price dislocation at the close, would remove impediments to and perfect the mechanism of a fair and orderly market because it would assure that the Exchange could effectuate the close within the proposed specified price ranges. The proposed rule therefore promotes just and equitable principles of trade because it provides transparency to entering firms of whether interest would be eligible to participate in a closing transaction effectuated by the Exchange.

### *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 enable the Exchange to close trading where circumstances would prevent a DMM from facilitating a close.

### *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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</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>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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>18</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-2015-05 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-2015-05. 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 10:00 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-2015-05 and should be submitted on or before February 17, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Brent J. Fields,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74096; File No. SR-NASDAQ-2014-116]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change Relating to the NASDAQ Opening and Halt Cross

January 20, 2015.

#### I. Introduction

On November 21, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to its process for opening trading on Nasdaq Options Market, LLC ("NOM") at the beginning of the trading day and following a trading halt. The proposed rule change was published for comment in the **Federal Register** on December 10, 2014.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to modify its process for opening option trading on NOM at the beginning of the trading day

and following a trading halt. The Exchange proposes to accomplish this by revising definitional terms set forth in Chapter VI, Sections 1 and 8(a) of its rules, and by revising the description of the processing of the Nasdaq Opening Cross<sup>4</sup> set forth in Chapter VI, Section 8(b) of its rules. The Exchange also proposes to revise the language set forth in Chapter VI, Section 8(c) describing what occurs in the absence of an opening cross.<sup>5</sup>

##### *Definitions—Sections 1 and 8(a)*

The Exchange proposes to add an "On the Open Order" or "OPG" as a new order type and time-in-force condition defined in Section 1. As proposed, any order designated as such would be executable only during the Nasdaq Opening Cross, with any portion not so executed cancelled back to the entering participant.<sup>6</sup>

In addition, the Exchange proposes to make the following definitional changes to Section 8(a):

- "Order Imbalance Indicator" is currently defined as a message disseminated by electronic means containing information about "Eligible Interest"<sup>7</sup> and the price in penny increments at which such interest would execute at the time of dissemination.<sup>8</sup> The "Current Reference Price" is one piece of information disseminated as part of the Order Imbalance Indicator and, as currently defined, is determined based on three price parameters.<sup>9</sup> The Exchange proposes to delete these price parameters and to simplify the definition of "Current Reference Price" to be: An indication of what the opening cross would be at a particular point in time.<sup>10</sup> Additionally, the indicative prices at which the Nasdaq Opening

<sup>4</sup> The term "Nasdaq Opening Cross" is defined in Chapter VI, Section 8(a)(3) of the Exchange's rules. As is discussed *infra*, this definition is among those that the Exchange has proposed to revise.

<sup>5</sup> Unless otherwise noted, all citations herein to Sections of the Exchange's rules are citations to Sections of Chapter VI of its rules.

<sup>6</sup> See proposed Sections 1(e)(7) and 1(g)(1).

<sup>7</sup> The term "Eligible Interest" is defined in Section 8(a)(4) and, as discussed below, is a term that the Exchange proposes to modify.

<sup>8</sup> See Section 8(a)(2). The Exchange proposes to provide itself with the ability to disseminate the Order Imbalance Indicator more frequently than the five second intervals currently required. See proposed Section 8(b)(3). The Exchange also proposes to specify that the dissemination interval, in addition to the start of dissemination, would be posted on its Web site. *Id.*

<sup>9</sup> See Section 8(a)(2)(A).

<sup>10</sup> See proposed Section 8(a)(2)(A). The Exchange states that the revised definition of Current Reference Price would be substantively similar to the current definition, but with the opening cross price determined pursuant to Section 8(b). See Notice, 79 FR at 73383.

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

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 73739 (November 12, 2014), 79 FR 73382 ("Notice").