

consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.<sup>15</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>16</sup>

At any time within 60 days of the filing of the 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:

##### *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-NASDAQ-2012-075 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-NASDAQ-2012-075. 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

<sup>15</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44). See also *supra* note 4.

<sup>16</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-NASDAQ-2012-075 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2012-16539 Filed 7-5-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67318; File No. SR-NYSEMKT-2012-13]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Rule Change, as Modified by Amendment No. 1 Thereto, (1) Amending Rule 13—Equities To Establish New Order Types, (2) Amending Rule 115A—Equities To Delete Obsolete Text and To Clarify and Update the Description of the Allocation of Market and Limit Interest in Opening and Reopening Transactions, (3) Amending Rule 123C—Equities To Include Better-Priced G Orders in the Allocation of Orders in Closing Transactions, and (4) Making Other Technical and Conforming Changes

June 29, 2012.

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 June 15, 2012, NYSE MKT LLC (“NYSE MKT” or “Exchange”) filed with the Securities

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

and Exchange Commission (“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 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 13—Equities to establish new order types, (2) amend Rule 115A—Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C—Equities to include better-priced G orders in the allocation of orders in closing transactions, and (4) make other technical and conforming changes. 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to (1) amend Rule 13—Equities to establish new order types, (2) amend Rule 115A—Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C—Equities to include better-priced G orders<sup>4</sup> in the allocation of

<sup>4</sup> A G order is a proprietary order represented pursuant to Section 11(a)(1)(G) of the Securities Exchange Act of 1934 (the “Act”). Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account

orders in closing transactions, and (4) make other technical and conforming changes.

#### Rule 13—Equities Order Type Amendments

The Exchange proposes to amend Rule 13—Equities to delete the At the Opening and At the Opening Only order types<sup>5</sup> and replace them with Market “On-the-Open” (“MOO”) and Limit “On-the-Open” (“LOO”) order types, terminologies commonly used by other exchanges<sup>6</sup> and variations of the Market “At-the-Close” (“MOC”) and Limit “At-the-Close” (“LOC”) order types already offered by the Exchange.<sup>7</sup> Under current Rule 13—Equities, At the Opening and At the Opening Only orders can execute after the security opens on a quote, which is why the current definition includes provisions relating to routing such interest to an away market. The Exchange wishes to preclude such interest from executing after opening on a quote, or routing to an away market, and as such, the new MOO and LOO order definitions would specifically provide that such order types automatically cancel if the security opens either on a quote or a trade.

A MOO would be defined as a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange; it would be immediately and automatically cancelled if the security opened on a quote or if it were not executed due to tick restrictions. A LOO order would be defined as a limit order

over which it or an associated person exercises discretion. See 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction (“G order”). A g-Quote is an electronic method for Floor brokers to represent G orders. The Exchange proposes to amend Rule 13—Equities to define a “G order” as the term is currently used in Rule 123C(7)—Equities, and the Exchange proposes to add it to Rule 115A—Equities.

<sup>5</sup> Under current Rule 13—Equities, these orders are market or limited price orders that are to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS; any such order or portion thereof not so executed is treated as cancelled. An At the Opening or At the Opening Only order that seeks the possibility of an Exchange-only opening execution must be marked as a Regulation NMS-compliant Immediate or Cancel (“IOC”) order. An order so marked, or part thereof, is immediately and automatically cancelled if it is not executed on the opening trade of the stock on the Exchange or compliance with Regulation NMS requires all or part of such order to be routed to another market center.

<sup>6</sup> See, e.g., NYSE Arca Equities Rule 7.31(t)(1) and (2); NASDAQ Rule 4752(a)(3) and (4); and BATS Exchange Rule 11.23(a)(14) and (16).

<sup>7</sup> See Rule 13—Equities.

in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or a part thereof, would immediately and automatically cancel if by its terms it were not marketable at the opening price, if it were not executed on the opening trade of the security on the Exchange, or if the security opened on a quote. Both MOO and LOO orders could be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

The Exchange also proposes to add a new paragraph (c) in the definition of IOC orders to provide for a new order type, an IOC-Minimum Trade Size (“MTS”) order (“IOC-MTS order”), which would be defined as any IOC order, including an intermarket sweep order, that includes an MTS instruction.<sup>8</sup> For each incoming IOC-MTS order, Exchange systems would evaluate whether contra-side displayable and non-displayable interest on Exchange systems could meet the MTS and reject such incoming IOC-MTS order if Exchange contra-side volume could not do so. An Exchange IOC order with an MTS could result in an execution in an away market. For example, assume that the Exchange best bid or offer is \$10.05–\$10.07 with 500 shares offered. A buy Exchange IOC-MTS market order for 500 shares arrives, and because the Exchange can fill it, the incoming Exchange IOC-MTS order would be accepted. However, if the current best protected offer is \$10.06 on another market for 200 shares, the Exchange would route 200 shares of the incoming Exchange IOC-MTS to Nasdaq and execute the balance of 300 shares at \$10.07. The Exchange would reject any IOC-MTS orders if the security were not open for trading, if it were halted or paused, or if auto-execution were suspended.

The Exchange proposes non-substantive amendments to its Immediate or Cancel definition as well, including adding the short-form term “IOC” to the rule, redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and conforming existing rule text to provide that only an IOC order without an MTS could be entered before the Exchange opening for participation in the opening trade or when auto execution is suspended,

<sup>8</sup> A minimum trade size instruction is currently available to Floor brokers for d-quotes under NYSE Rule 70.25(d)—Equities. Nasdaq also offers a Minimum Quantity Order, which is a non-displayed order that will not execute unless a specified minimum quantity of shares can be obtained.

which includes during a trading pause or halt.

The Exchange proposes, as a technical and conforming amendments to Rule 13—Equities, to delete the definition of Time Order because this relates to a Floor broker order that historically would have been held by the specialist on behalf of the Floor broker and converted to a market or limit order at a specified time. In connection with both the Hybrid Market initiative and the Exchange’s New Market Model, this order type is now obsolete and can no longer be used by Floor brokers.

#### Rule 115A—Equities Opening Allocation

The Exchange proposes to amend Rule 115A—Equities, which addresses orders at the opening or in unusual situations. Currently, the Rule contains no text but has Supplementary Material .10, which addresses queries to the Display Book before an opening; Supplementary Material .20, which addresses the arranging of an opening or price by a Designated Market Maker (“DMM”); and Supplementary Material .30, which addresses certain functions of Exchange systems with respect to orders at the opening.

The Exchange proposes to redesignate Supplementary Material .10 as Rule 115A(a)—Equities but does not propose any change to the text of this provision.

The Exchange proposes to add new Rule 115A(b)—Equities, which would address the allocation of orders on opening and reopening trades and delete in its entirety the text of Supplementary Material .20 and .30. Most of the current text of Supplementary Material .20 and .30 is obsolete in that it describes DMM functions that have not been performed since the second phase of the New Market Model was launched in 2008.<sup>9</sup> DMMs no longer hold orders. As such, the Exchange proposes to delete all of the text relating to those functions. Supplementary Material .30 also contains text describing Exchange systems that is either outdated or covered by Rule 15—Equities, and as such, also would be deleted.

A few of the current provisions of Supplementary Material .20 continue to be applicable following adoption of the New Market Model. Current paragraphs 2(a), (b), and (c) of Supplementary Material .20 address the allocation and precedence of certain orders in openings and reopenings. Paragraph 2(a) provides that a limited price order to buy (sell)

<sup>9</sup> See Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

that is at a higher (lower) price than the security is to be opened or reopened is treated as a market order, and market orders have precedence over limited orders. Paragraph 2(b) provides that when the price on a limited price order is the same as the price at which the stock is to be opened or reopened, it may not be possible to execute a limited price order at such price. Paragraph 2(c) requires a DMM to see that each market order the DMM holds participates in the opening transaction, and if the order is for an amount larger than one round lot, the size of the bid that is accepted or the offer that is taken establishing the opening or reopening price is the amount that a market order is entitled to participate in at the opening or reopening.

The Exchange proposes to move these concepts concerning the allocation and precedence of orders in openings and reopenings to proposed Rule 115A(b)—Equities; further clarify and update the text to better reflect the Exchange's current practices; and expressly address the treatment of MOOs, LOOs, tick-sensitive market orders, Floor broker interest manually entered by DMMs, and G orders. Proposed Rule 115A(b)—Equities would provide that when arranging an opening or reopening price, except as provided for in proposed Rule 115A(b)(2)—Equities, which is described below, market interest would be guaranteed to participate in the opening or reopening transaction and have precedence over (i) limit interest that is priced equal to the opening or reopening price of a security and (ii) DMM interest. For purposes of the opening or reopening transaction, market interest would include (i) market and MOO orders, (ii) tick-sensitive market and MOO orders to buy (sell) that are priced higher (lower) than the opening or reopening price, (iii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iv) Floor broker interest entered manually by the DMM.

For purposes of the opening or reopening transaction, limit interest would include (i) limited-priced interest, including e-Quotes, LOO orders, and G orders; and (ii) tick-sensitive market and MOO orders that are priced equal to the opening or reopening price of a security. Limit interest that is priced equal to the opening or reopening price of a security and DMM interest would not be guaranteed to participate in the opening or reopening transaction. In addition, G orders that are priced equal to the opening or reopening price of a security would yield to all other limit interest priced equal to the opening or

reopening price of a security except DMM interest.

The Exchange also proposes to include in the rule more specificity of the circumstances of when a security may open on a quote, and what would happen to odd-lot sized orders in such scenario. Proposed Rule 115A(b)(2)—Equities would provide that if the aggregate quantity of MOO and market orders on at least one side of the market equals one round lot or more, the security must open on a trade. If the aggregate quantity of MOO and market orders on each side of the market equals less than one round lot or is zero, the security could open on a quote. If a security opens on a quote, odd-lot market orders would automatically execute in a trade immediately following the open on a quote and odd-lot MOOs would immediately and automatically cancel. MOO and market orders subject to tick restrictions that either cannot participate at an opening or reopening price or are priced equal to the opening or reopening price would not be included in the aggregate quantity of MOO and market orders.

#### Rule 123C—Equities Closing Allocation

The Exchange proposes to amend Rule 123C—Equities to include better-priced G orders in the list of orders that must be allocated in whole or part in closing transactions. G orders on the Exchange yield priority and parity to other non-G orders, other than CO Orders.<sup>10</sup> However, Section 11(a)(1)(G) of the Act does not require better-priced G orders to yield.

Currently, Rule 123C(7)(a)—Equities sets forth six order types that must be included in the closing transaction in the following order: (1) MOC orders that do not have tick restrictions, (2) MOC orders that have tick restrictions that limit the execution of the MOC to a price better than the price of the closing transaction, (3) Floor broker interest entered manually by the DMM, (4) limit orders better priced than the closing price, (5) LOC orders that do not have tick restrictions better priced than the closing transaction, and (6) LOC orders better priced than the closing transaction that have tick restrictions that are capable of being executed based on the closing price. Rule 123C(7)(b)—Equities provides that the following interest may be used to offset a closing imbalance in the following order: (1) Limit orders represented in the Display Book with a price equal to the closing price, (2) LOC orders with a price equal to the closing price, (3) MOC orders that have tick restrictions that limit the

execution of the MOC to the price of the closing transaction, (4) LOC orders that have tick restrictions that are capable of being executed based on the closing price and the price of such limit order is equal to the price of the closing transaction, (5) G orders, and (6) Closing Only orders.

The Exchange proposes to amend Rule 123C(7)(a)—Equities to add G orders that are better priced than the closing price as the last type of order that must be included in the closing transaction and to make a conforming change to Rule 123C(7)(b)—Equities to reference G orders priced equal to the closing price as being eligible to be used to offset a closing imbalance with the same priority as the current Rule reflects. Rule 123C(7)(b)(i)—Equities also would be clarified by adding that DMM interest, as well as limit orders represented in the Display Book with a price equal to the closing price, are the first types of interest that may be used to offset a closing imbalance.<sup>11</sup>

The Exchange notes that in amending Rules 115A—Equities and 123C—Equities to include better-priced G orders in the allocation of orders in opening, reopening, and closing transactions, G orders priced at the opening, reopening, or closing price will still yield priority and parity to other non-G orders, other than CO Orders at the close, as required by Section 11(a) of the Act. The Exchange further notes that there is no requirement under the Act that better-priced G orders yield. The Exchange believes that including better-priced G orders in the required allocation for opening, reopening, and closing transactions will encourage member organizations to provide price improvement and liquidity on the Exchange. Moreover, for opening and reopening transactions, if better-priced G orders are not included in the “has to go” interest, immediately following the opening, such better-priced G orders will automatically be quoted, which, assuming it is sell G order interest, could result in an opening transaction, and then a sell quote that is below the opening price.

<sup>11</sup> The New York Stock Exchange LLC, upon which rules the Exchange equities rules are based, has noted in prior rule filings that DMM interest would be treated in such a manner. *See, e.g.*, Securities Exchange Act Release No. 60974 (Nov. 9, 2009) 74 FR 59299 (Nov. 17, 2009) (SR-NYSE-2009-111) (“After the ‘must execute interest’ is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better-priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.”).

<sup>10</sup> *See supra* note 4.

Because these are technology-based changes, the Exchange will announce the implementation schedule via Trader Update.

## 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, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that deleting the At the Opening and At the Opening Only order types and creating new MOO and LOO order types provide more clarity about how opening orders are processed, and in particular that automatically canceling such orders when the Exchange opens on quote will create efficiencies and also remove impediments to a free and open market. The Exchange further believes that offering a new order type, an IOC-MTS, will offer investors new trading opportunities on the Exchange. The LOO, MOO, and IOC-MTS orders are similar to orders that have already been approved by the Commission.<sup>14</sup>

The Exchange believes that amending Rule 115A—Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in openings and reopenings and address the treatment of additional order types will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed changes to Rule 123C—Equities and related proposed change concerning the treatment of better-priced G orders in Rule 115A—Equities will 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, and that the proposed changes also are consistent with Section 11(a)(1)(G) of the Act. As discussed above, G Orders priced at the opening, reopening, or closing price will

continue to yield, as required by Section 11(a). Moreover, the Exchange believes that for the opening and reopening transactions, including better-priced G interest as "has-to-go" interest will encourage member organizations to provide price improvement and liquidity at the Exchange. The Exchange further believes that amending Rule 123C(7)(b)(i)—Equities to expressly provide for the treatment of DMM interest in offsetting a closing imbalance will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the technical changes to remove obsolete references in Rule 13—Equities also will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

### 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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-2012-13 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-2012-13. 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 the filing will also 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 publicly available. All submissions should refer to File Number SR-NYSEMKT-2012-13 and should be submitted on or before July 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 2012-16522 Filed 7-5-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>14</sup> See *supra* notes 6 and 8.