

would meet the Commission's previously stated expectation that the Exchange discontinue its LRPs.<sup>39</sup> Furthermore, the Exchange states its belief that meeting this expectation as soon as the technology becomes available, which the Exchange represents would be before the end of the operative-delay period, is consistent with the protection of investors and the public interest because it would implement the discontinuation of its LRPs as expeditiously as possible. Finally, the Exchange asserts that the proposed rule change would also add market collars that are similar to existing mechanisms on other markets and would reduce the potential of a clearly erroneous execution occurring on the Exchange. The Exchange, therefore, concludes that waiver of the operative delay so that it can implement market collars as soon as the technology is available is not only consistent with the protection of investors and the public interest, but would also benefit investors and the public interest. Because the proposed rule change would eliminate the Exchange's LRPs, consistent with the adoption of the Plan, and because the proposed rule change is designed to prevent clearly erroneous order executions, the Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>40</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. If the Commission takes such action, the Commission shall institute proceedings 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 S SR-NYSE-2015-01 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-NYSE-2015-01. 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 such filing also will be available for inspection and copying at the principal offices 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-NYSE-2015-01, and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74064; File No. SR-NYSEMKT-2015-02]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Price Protection Mechanism To Prevent the Automatic Execution of Incoming Market Orders and Marketable Limit Orders Outside a Specified Parameter and Eliminate Liquidity Replenishment Points and the Gap Quote Policy

January 15, 2015.

Pursuant to Section 19(b)(1) 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 January 8, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 (i) amend Rule 1000 to add a price protection mechanism to prevent the automatic execution of incoming market orders and marketable limit orders outside a specified parameter and (ii) eliminate its Exchange-specific volatility mechanisms—Liquidity Replenishment Points ("LRPs") and its Gap Quote Policy—and to delete any references thereto from the 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, 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,

<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>39</sup> See *supra* n. 4.

<sup>40</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).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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 1000—Equities to add a price protection mechanism to prevent the automatic execution of incoming market orders and marketable limit orders outside a specified parameter (referred to as a “Trading Collar”). The Exchange also proposes to eliminate its Exchange-specific volatility mechanisms—LRPs and Gap Quote Policy—and to delete any references thereto from the Exchange rules. The Exchange believes that the proposed Trading Collars would assist with the maintenance of fair and orderly markets by mitigating the risks associated with orders sweeping through multiple price points, resulting in executions at prices that are away from the best bid or offer and potentially erroneous. As discussed further below, the discontinuation of the Exchange-specific volatility mechanisms were anticipated changes following implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility (the “Plan”).<sup>4</sup>

Background: Liquidity Replenishment Points and Gapping the Quote

Rule 1000—Equities provides for the basic operative principles regarding the immediate, automatic execution of market orders and marketable limit orders against the Exchange's published quotation.<sup>5</sup> The Rule also lists instances in which automatic execution would not be available due to certain market conditions, including when Exchange-specific volatility mechanisms, specifically LRPs and gapping the quote, have been triggered.

<sup>4</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33510, n. 182 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan) (The Commission “expects, that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.”) See also Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (the Seventh Amendment to the Plan).

<sup>5</sup> Automatic executions may also be against orders on the Display Book®, Floor broker agency file interest, Floor broker proprietary file interest, Designated Market Maker (“DMM”) interest, and interest placed in the Exchange's systems by DMMs pursuant to a Capital Commitment Schedule in accordance with, and to the extent provided by, Exchange rules and shall be immediately reported as Exchange transactions. See Rule 1000(a).

Liquidity Replenishment Points

In March 2006, the Exchange implemented the LRP mechanism to address market volatility on the New York Stock Exchange, LLC (“NYSE”) and, in 2008, adopted LRPs for use on the Exchange.<sup>6</sup> The Exchange has utilized LRPs, which are triggered by rapid price movements over a short period of time, to moderate volatility in a security by temporarily converting the electronic market for the security into an auction market to afford new trading interests the opportunity to add liquidity.<sup>7</sup> The Exchange believes that LRPs were effective in moderating some of the impact from the events of May 6, 2010 for Exchange trading customers, as evidenced by the lack of erroneous trades on the Exchange.<sup>8</sup> In 2012, in approving the Plan, the Commission noted the “potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained”; thus, the Commission stated its “expect[ation], that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges.”<sup>9</sup>

In 2013, to coincide with the implementation of the Plan, the Exchange filed amendments to Rule 1000 that provided for the phasing out of the functionality associated with LRPs as the Plan was phased in across all NMS Stocks.<sup>10</sup> The Plan was fully implemented across all NMS Stocks on February 24, 2014, and as such, pursuant to Rule 1000(a)(iv)(A), the Exchange has discontinued the use of LRPs for all NMS Stocks that are subject to the Plan.<sup>11</sup>

Gapping the Quote

When an imbalance in a particular security exists, the manual process

<sup>6</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05); see also Securities Exchange Act Release Nos. 58265 (July 30, 2008), 73 FR 46075 (Aug. 7, 2008) (notice); 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approval order for the adoption of NYSE Rules 1–1004 on the Exchange).

<sup>7</sup> See Securities Exchange Act Release No. 69294 (April 4, 2013), 78 FR 21441 (April 10, 2013) (SR–NYSEMKT–2013–33).

<sup>8</sup> *Id.*  
<sup>9</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498, 33510, n. 182 (June 6, 2012).

<sup>10</sup> See *supra* n. 7; See Securities Exchange Act Release No. 69696 (June 4, 2013) 78 FR 34687 (June 10, 2013) (SR–NYSEMKT–2013–46).

<sup>11</sup> See Securities and Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (the Seventh Amendment to the Plan). The Exchange notes that rights and warrants are not subject to the Plan, and therefore continue to be subject to LRPs.

known as “gapping the quote” occurs—specifically, the DMM for the security widens the spread between the bid and offer and publishes a new gapped quote. Order imbalances may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest. The Exchange first implemented its policies and procedures for gapping the quote in 1994 and updated the Gap Quote Policy in 2010.<sup>12</sup> As stated in the Policy, a DMM gaps a quote to “provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side.”<sup>13</sup> A DMM may gap a quote after an LRP has been reached. A gapped quote is not available for automatic execution.

Proposed Trading Collar

The Exchange proposes to amend Rule 1000—Equities to add a price protection mechanism to prevent the automatic execution or routing of incoming market orders, including elected stop orders, and marketable limit orders<sup>14</sup> outside a specified parameter (referred to as a “Trading Collar”). As proposed, an incoming market order or marketable limit order to buy (sell) would not execute or route to another market center at a price above (below) the Trading Collar. Trading Collars would be applicable only when automatic executions are in effect.<sup>15</sup> As

<sup>12</sup> See Information Memo 94–32 (August 9, 1994), filed as SR–NYSE–93–48. See Securities Exchange Act Release No. 34303 (July 1, 1994), 59 FR 35157 (July 8, 1994). See also Information Memorandum 10–3 (January 7, 2010), filed as NYSEAmex–2010–05. See Securities and Exchange Act Release No. 61402 (January 22, 2010), 75 FR 4602 (January 28, 2010) (changing the minimum size and value requirements for use of gap quotes).

<sup>13</sup> See Securities Exchange Act Release No. 61049 (November 23, 2009), 74 FR 62851 (SR–NYSEAmex–2009–82) (December 1, 2009).

<sup>14</sup> A market order is an “order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd or routed to the Display Book®.” See Rule 13—Equities. A marketable limit order is defined as “a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book®.” *Id.* Because a stop order becomes a market order when elected, the Exchange believes it is appropriate to provide that elected stop orders would be subject to the proposed Trading Collar.

<sup>15</sup> See proposed Rule 1000(c)(ii)—Equities. Both market orders and marketable limit orders are “auto ex orders” that initiate automatic executions immediately upon entry into the Exchange systems. See Rule 13—Equities. Trading Collars would not

discussed below, on arrival, a buy/sell order would be automatically executed up/down to (and including, but not beyond) the Trading Collar and any remaining interest shall be cancelled. Unless it is a non-routable order, the order would route to all markets at or better than the Trading Collar.<sup>16</sup>

Pursuant to proposed Rule 1000(c)(i), a Trading Collar would be a specified percentage away from the National Best Bid or Offer (“NBBO”), depending on whether it is a buy or sell order, and the specified percentage would vary depending on the NBBO at the time the order arrives and/or is executed. For buy orders, the Trading Collar would be a specified percentage above the National Best Offer (“NBO”). For sell orders, the Trading Collar would be a specified percentage below the National Best Bid (“NBB”). The proposed Trading Collars are set forth in the table below.

NBB/NBO	Percentage away from the NBB/NBO
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 Exchange notes that these proposed percentages are based on the current numerical guidelines for determining whether a clearly erroneous execution has occurred.<sup>17</sup> The Exchange further notes that the proposed percentages are the same as the percentages applicable to similar trading collar functionality on NYSE Arca Equities, Inc. (“NYSE Arca Equities”).<sup>18</sup> The Exchange believes that the proposed specified percentages are appropriate because the Trading Collar is designed to reduce the risk of, and to potentially prevent, the automatic execution of orders at prices that may be considered clearly erroneous. Because the specified percentage may extend multiple decimal points, the Exchange proposes to truncate Trading Collars to

be applicable to Set Slow Stocks, or to pre-opening, opening, closing or manual transactions, and are not in effect during a halt, suspension, or pause in trading. Trading Collars would apply, and be determined, when discretionary pricing instructions are triggered. Trading Collars would not be displayed.

<sup>16</sup> If, however, an order that routed to an away market returns to the Exchange unexecuted, the Trading Collar based on the NBBO in place at the time of execution would be used for that incoming (now returning) order, not the Trading Collar based on the NBBO in place at the time of the original arrival of the order.

<sup>17</sup> See Rule 128(c)(1)—Equities.

<sup>18</sup> See NYSE Arca Equities Rule 7.31(a)(2).

the nearest minimum price variation (“MPV”) for the security.<sup>19</sup>

Consider an example where the NBBO is  $\$24.95 \times 25.01$ . In such scenario, the Trading Collar for buy orders would be  $\$26.26$  (*i.e.*,  $\$25.01 + 5\% = \$26.2605$ , truncated to  $\$26.26$ ) and the Trading Collar for sell orders would be  $\$22.44$  [*i.e.*,  $\$24.95 - 10\% = \$22.455$ , truncated to  $\$22.45$ ].

The Exchange proposes that if the NBBO is crossed, the Exchange would use the Exchange Best Offer (“BO”) instead of the NBO for buy orders, and the Exchange Best Bid (“BB”) instead of the NBB for sell orders.

The Exchange believes it is appropriate to use the BB/BO when the NBBO is crossed as a crossed NBBO is generally indicative of an erroneously priced or stale bid and/or offer, and may not be appropriate reference prices for calculating Trading Collars. The Exchange believes that this practice will help ensure that market participants obtain timely executions of their market orders and marketable limit orders while still being afforded the price protection benefit of the Trading Collars. As proposed, in the event there is no NBB or BB, the lower boundary of the Trading Collar would be zero because there would be no reference price against which to determine the appropriate Trading Collar. Similarly, in the event there is no NBO or BO, the upper boundary of the Trading Collar would be set to the maximum price that the System could handle. Notwithstanding the Trading Collar, any incoming market orders or marketable limit orders would still be subject to the Plan and could not execute outside of the Upper (Lower) Price Band, as defined in Rule 80C—Equities.

Pursuant to proposed Rule 1000(c)(ii), an incoming market order, including an elected stop order, or marketable limit order would execute and/or route up or down to (and including) the Trading Collar and any remaining interest would be cancelled. The Exchange believes that Trading Collars, working in conjunction with the Plan, could help limit potential harm from extreme price volatility by preventing executions that could occur at a price significantly away from the contra side. As proposed, if the Trading Collar for incoming buy (sell) interest is lower (higher) than or equals the Upper (Lower) Price Band<sup>20</sup>, the Exchange would cancel any remaining interest. The Plan, however, would take priority over the Trading Collars where the Plan affords more price protection to incoming orders. Specifically, if the

<sup>19</sup> See Rule 62—Equities.

<sup>20</sup> See Rule 80C—Equities.

Upper (Lower) Price Band is lower (higher) than the Trading Collar, the order would execute at the more restrictive Upper (Lower) Price Band and not beyond and any remaining interest would be displayed or repriced to the Price Band, consistent with Rule 80C(a)(5)—Equities.

The Exchange notes that if there is no execution opportunity at the Exchange for an incoming buy (sell) order at a price above (below) the NBO (NBB), the Exchange would not be obligated to route the order to an away market protected offer (bid) because the incoming order would not be trading through such protected quotation. The Exchange therefore proposes that if there is no execution opportunity at the Exchange for an incoming buy (sell) order at a price above (below) the NBO (NBB) and at or below (above) the Trading Collar, a buy (sell) order that is priced at or above (below) the Trading Collar would be cancelled. The Exchange further proposes that a similarly-priced, partially-executed order would also be cancelled.

For example, assume the NBO is 10.00, based on a quote from an away market, and therefore the proposed Trading Collar is 11.00. Assume further that the Exchange’s best offer is 11.05 and with these conditions, the Exchange receives an incoming buy order priced at 11.02. Because there is no execution opportunity for the incoming buy order above the NBO and at or below the Trading Collar, and because the order’s limit price exceeds the Trading Collar, the incoming buy order would be cancelled. The buy order would cancel rather than route because the Exchange would not trade through another market. Similarly, assuming the same facts, but the Exchange has non-displayed interest to sell priced at 9.99. An incoming buy order priced at 11.02 would execute against that 9.99 non-displayed sell interest, and then any remainder of the buy order would similarly be cancelled because there is no execution opportunity priced above the NBO of 10.00 or at or below the Trading Collar of 11.00.

Finally, pursuant to proposed Rule 1000(c)(iii), during a Short Sale Price Test,<sup>21</sup> if the NBBO is crossed, short sale orders that would be re-priced to a Trading Collar would be cancelled. Under Rule 201 of Regulation SHO,<sup>22</sup> when the NBBO is crossed, a short sale order in a covered security may be displayed or executed at a price that is less than or equal to the current national

<sup>21</sup> See Rule 440B(b)—Equities.

<sup>22</sup> 17 CFR part 242.201.

best bid.<sup>23</sup> Accordingly, if the NBBO is crossed, a short sale order priced at or below the Trading Collar could be re-priced to the Trading Collar, which is by definition a price below the NBB. In the spirit of Rule 201 of Regulation SHO, which is to prevent the display or execution of short sale orders at prices equal to or below the NBB, the Exchange believes that it is appropriate during a crossed market to cancel a short sale order that would be re-priced to a Trading Collar rather than display the order at that price.

The Exchange also proposes to amend Rule 70.25(b)(i)—Equities, regarding price discretion or “d-Quotes,” which states that “[a] Floor broker may set a discretionary price range that specifies the prices at which the Floor broker is willing to trade.” Specifically, the Exchange proposes to amend this Rule to provide that d-Quotes are subject to the Trading Collar and/or the Price Bands and, thus, pursuant to the amended rule, Floor Brokers may use discretion to initiate or participate in a trade with interest capable of trading at a price within the discretionary price range “unless the interest reaches a Trading Collar or Price Band, whichever is reached first.”<sup>24</sup> The Exchange believes it is appropriate to similarly afford Trading Collar price protection to d-Quotes to prevent the execution of orders with discretionary price instructions at prices outside the prevailing market price from causing significant price dislocation in the market.<sup>25</sup>

The Exchange also proposes to amend Rule 512—Equities to state that Trading Collars would apply to UTP Securities.<sup>26</sup> Although LRPs do not apply to UTP Securities, the Exchange believes it is appropriate to afford these

securities Trading Collar protection because application of the Trading Collar is a straightforward and objective process that does not raise the same issue as was at issue for UTP Securities, *i.e.*, identifying appropriate LRP values for actively-traded symbols that have low volume on the Exchange.

#### Proposed Elimination of LRPs and Gap Quote Policy

As noted above, by rule, the Exchange has already discontinued the use of LRPs for any security subject to the Plan. However, LRPs continue to be available for rights and warrants, which are not subject to the Plan. The Exchange believes that with the introduction of Trading Collars it will have in place appropriate price protections for rights and warrants and the Exchange will no longer need LRPs for those securities. Accordingly, the Exchange proposes to complete the Exchange’s discontinuation of LRPs in their entirety by deleting references to LRPs in the following Equities Rules: 60, 79A, 104, 128, 501, 508, 512, and 1000.

For similar reasons, the Exchange believes it appropriate to discontinue the Gap Quote Policy. Accordingly, the Exchange proposes to eliminate its Gap Quote Policy in its entirety and to delete references thereto in the following Equities Rules: 60, 79A, 104, 501, 508, and 1000.

Relatedly, the Exchange also proposes to amend Rule 1000(e) (Executions at and Outside the Exchange Best Bid or Offer) to add references to Trading Collars and/or Price Bands, in certain cases to replace deleted references to LRPs. The Exchange believes these proposed changes will add transparency and clarity to the Exchange’s rules.

#### Other Proposed Amendments

In connection with the addition of the Trading Collar, the Exchange also proposes to amend the definition of market order, in Rule 13—Equities, to state that if a market order to sell has exhausted all eligible buy interest, any unfilled balance of the market order to sell will be cancelled. The Exchange believes that this is appropriate because it assures that a market order to sell will not be held at a price that it is not executable, *i.e.*, \$0.00.

Finally, unrelated to issues raised in present filing, the Exchange is also proposing technical, non-substantive edits to delete from the Exchange rules the outdated/obsolete references to securities operating in “Non-Firm Mode,” including in Rule 60(c)(ii)(A) and Rule 1000(a)(i), or the block template, referred to in Rule 60(ii)(B),

which is the “manual reporting of a block-sized transaction.” The Exchange also proposes to delete the reference to “S-quotes” in Rule 60(d), 1000(a) and 1000(e)(iii)(A), as DMM interest is no longer solely referred to in this manner and the Exchange believes the proposed amendment will remove this outmoded and narrow reference. The Exchange also proposes to amend the last sentence of Rule 60(d), regarding “[a]utoquoting of highest bid/lowest offer,” to account for the impact of the Trading Collars.<sup>27</sup> In addition, the Exchange proposes to amend Rule 1000(e)(iii)(A)(4) to replace an incorrect reference to NYSE with a reference to the Exchange. The Exchange proposes to delete Rule 79A.15(ii)(C)(6), which is an outmoded reference to bonds that does not conform to how bonds currently operate on the Exchange or the NYSE, and to renumber the remaining subparts of this rule accordingly. Finally, the Exchange proposes to delete an erroneous reference in Rule 1000(e)(iv) to paragraph (d)(iii), as there is no such paragraph in the Rule.

#### Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>28</sup> that an Exchange have rules that are designed to promote the just and equitable principles of trade, 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.

As an initial matter, the Exchange notes that the proposed Trading Collar, which is designed to promote the just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, is similar to the price protection features offered on other markets, including NYSE Arca Equities.<sup>29</sup> As noted above, the specified

<sup>23</sup> See SEC Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, FAQ 6.1, available at: <http://www.sec.gov/divisions/marketreg/rule201faq.htm>.

<sup>24</sup> See proposed Rule 70.25(b)(i).

<sup>25</sup> The Trading Collar applies to d-Quotes in the same manner as other order types. See *supra* n. 15 (Trading Collars apply when discretionary pricing instructions are triggered, but do not apply to openings, re-openings, or closing trades).

<sup>26</sup> Current Rule 512—Equities states that LRPs will not apply to UTP Securities. See Information Memo 10–34 (July 12, 2010) (explaining that the Nasdaq Securities newly-listed on the Exchange would “be more thinly traded on the Exchange, with lower volume and less liquidity than its listed securities, and that prices for Nasdaq Securities will therefore be more volatile” and thus “in order to avoid triggering too many ‘slow’ trading situations, the Exchange removed the application of LRP parameters for trading Nasdaq Securities.”) In 2014, the Exchange expanded the UTP Program beyond Nasdaq securities. See Securities Exchange Act Release No. 71952 (April 16, 2014) 79 FR 22558 (April 22, 2014) (SR–NYSEMKT–2014–32).

<sup>27</sup> As proposed, the final sentence of Rule 60(d) would state the following: “When the Exchange’s highest bid or lowest offer has been executed or cancelled in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of displayable orders at the next highest (in the case of a bid) or lowest (in the case of an offer) price.”

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> See *e.g.*, NYSE Arca Equities Rule 7.31(a)(2). See also BATS Exchange, Inc. (“BATS”) Rule 11.9(a)(2); BATS Y-Exchange, Inc. (“BATS–Y”) Rule 11.9(a)(2); EDGA Exchange, Inc. (“EDGA”) Rule 11.8(a)(7); EDGX Exchange, Inc. (“EDGX”)

percentages relating to the Trading Collar are based on the current numerical guidelines for determining whether a clearly erroneous execution has occurred and are the same as the approved specified percentages applicable to similar trading collar functionality on NYSE Arca Equities.<sup>30</sup>

Moreover, the Exchange believes that the proposed Trading Collar assists with the maintenance of fair and orderly markets by helping to mitigate the risks associated with orders sweeping through multiple price points, thereby resulting in executions that are potentially erroneous, which, in turn, protects investors from potentially receiving executions away from the prevailing prices at any given time. Specifically, the Exchange believes the Trading Collars will remove impediments to and perfect the mechanisms of a free and open market because the Trading Collars will operate in tandem with the Plan and will only execute/route incoming market orders or marketable limit orders priced within the Trading Collars or within the Upper (Lower) Band set forth in the Plan, if the latter is more conservative. The Exchange believes this mechanism will mitigate the risk of potentially erroneous executions, which protects investors and the public interest.

The Exchange also believes its use of the BB/BO when the NBBO is crossed assists with the maintenance of fair and orderly markets as a crossed NBBO is generally indicative of an erroneously priced bid and/or offer, and should not be considered reliable for the purposes of determining the specified percentages for a Trading Collar. The Exchange believes that this practice will help ensure that market participants obtain timely executions of their market orders and marketable limit orders while still being afforded the price protection benefit of Trading Collar functionality, which protects investors and the public interest.

Similarly, the Exchange believes that affording Trading Collar price protection to d-Quotes as well as to UTP Securities would remove impediments to and perfect the mechanism of a free and open market as the Trading Collar would prevent the execution of d-Quotes and UTP Securities that are priced far away from the prevailing market price from causing significant price dislocation in the market, which, in turn, benefits investors and is in the public interest.

The Exchange believes that the technical, non-substantive proposed amendments and/or deletions related to the Trading Collar in rules other than Rule 1000—Equities, as described above, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed changes add transparency and clarity to the Exchange's rules and will enhance the understanding of market participants by reducing potential confusion that the obsolete references would otherwise create.

Finally, the Exchange previously committed to discontinue the Exchange-specific volatility mechanisms; thus, the elimination of LRPs and the Exchange's Gap Quote Policy are expected changes.<sup>31</sup> Moreover, the implementation of the Plan, together with the proposed Trading Collars eliminates the necessity for these Exchange-specific volatility mechanisms, as the Exchange will have in place appropriate price protections for all securities traded on the Exchange, including for rights and warrants.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the adding of Trading Collar protection will provide market participants with additional protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

#### *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>32</sup> and Rule 19b-4(f)(6) thereunder.<sup>33</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<sup>34</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>35</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>36</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>37</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange asserts that the rule change proposed herein would meet the Commission's previously stated expectation that the Exchange discontinue its LRPs.<sup>38</sup> Furthermore, the Exchange states its belief that meeting this expectation as soon as the technology becomes available, which the Exchange represents would be before the end of the operative-delay period, is consistent with the protection of investors and the public interest because it would implement the discontinuation of its LRPs as expeditiously as possible. Finally, the Exchange asserts that the proposed rule change would also add market collars that are similar to existing mechanisms on other markets and would reduce the potential of a clearly erroneous execution occurring on the Exchange. The Exchange, therefore, concludes that waiver of the operative delay so that it can market collars as soon as the technology is available is not only consistent with the protection of investors and the public interest, but would also benefit investors and the public interest. Because the proposed rule change would eliminate the Exchange's LRPs, consistent with the adoption of the Plan, and because the proposed rule change is designed to prevent clearly erroneous order executions, the Commission

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>38</sup> See *supra* n. 4.

Rule 11.8(a)(7); Nasdaq Stock Market LLC ("Nasdaq") Rule 4751(f)(13).

<sup>30</sup> See *supra* n. 17-18.

<sup>31</sup> See *supra* nn. 4, 7-9.

<sup>32</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>33</sup> 17 CFR 240.19b-4(f)(6).

believes that waiver of the operative delay is consistent with investor protection and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>39</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. If the Commission takes such action, the Commission shall institute proceedings 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-2015-02 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-2015-02. 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

<sup>39</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).

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 such filing also will be available for inspection and copying at the principal offices 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-2015-02, and should be submitted on or before February 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74062; File No. SR-Phlx-2015-06]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Sections II and IV of the Pricing Schedule

January 15, 2015.

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> notice is hereby given that, on January 13, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 the Monthly Market Maker Cap<sup>3</sup> and

<sup>40</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Specialists and Market Makers are subject to a "Monthly Market Maker Cap" of \$550,000 for: (i) Electronic and floor Option Transaction Charges;

certain transaction fees applicable to Specialists<sup>4</sup> and Market Makers<sup>5</sup> that have reached the Monthly Market Maker Cap, which are located in the Exchange's Pricing Schedule at Section II, entitled "Multiply Listed Options."<sup>6</sup> The Exchange also proposes to make conforming and clarifying amendments to Section IV, Part A of the Pricing Schedule entitled "PIXL Pricing."

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.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 Exchange 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 these 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 aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to amend certain Specialist and Market Maker pricing located in the Exchange's Pricing Schedule in Section II, entitled "Multiply Listed Options" in order to

(ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. The trading activity of separate Specialist and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in Section II) are excluded from the Monthly Market Maker Cap.

<sup>4</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

<sup>5</sup> A "market maker" includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (see Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

<sup>6</sup> This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.