

• Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-057 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-NASDAQ-2016-057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference 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 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 available publicly. All submissions should refer to File Number SR-NASDAQ-2016-057 and should be submitted on or before June 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77860; File No. SR-NYSE-2016-35]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 13 and Related Rules Regarding Market Orders

May 19, 2016.

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 May 16, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Rule 13 (Orders and Modifiers) and related rules regarding Market Orders. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend Rule 13 (Orders and Modifiers) and

related rules relating to Market Orders. The proposed changes are designed to simplify the Exchange's offering of order types by harmonizing the behavior of Market Orders with how similar orders operate on NYSE Arca Equities, Inc. ("NYSE Arca Equities"), the Exchange's affiliated equities marketplace, and by eliminating specified combinations of orders and modifiers.<sup>4</sup>

#### Overview

Currently, Market Orders are defined in Rule 13(a)(1) as 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 Exchange systems. If a Market Order to sell has exhausted all eligible buy interest, any unfulfilled balance of the Market Order to sell will be cancelled. Market Orders may include an immediate-or-cancel ("IOC") time-in-force modifier.<sup>5</sup> In addition, a Market Order may include an instruction to either buy "minus" or sell "plus."<sup>6</sup>

The Exchange proposes to simplify how Market Orders would function on the Exchange by harmonizing the behavior of Market Orders with how they operate on the Pillar trading platform on NYSE Arca Equities and by eliminating the ability to combine a Market Order with an IOC, buy "minus," or sell "plus" instruction, which are not available on the NYSE Arca Equities trading platform. The Exchange believes that eliminating these order type combinations would streamline its rules and reduce complexity among its order type offerings.<sup>7</sup>

#### Proposed Amendments to Market Orders

To effect the proposed changes to how Market Orders would operate, the Exchange proposes to amend Rule 13(a)(1) to provide that a Market Order that is eligible for automatic execution would be an unpriced order to buy or sell a stated amount of a security that is to be traded at the best price obtainable without trading through the NBBO. This proposed rule text is based on the first sentence of NYSE Arca Equities Rule 7.31P(a)(1), which provides that a Market Order is an unpriced order to

<sup>4</sup> NYSE Arca Equities is a wholly-owned subsidiary of NYSE Arca, Inc., which is a national securities exchange.

<sup>5</sup> See Rule 13(b)(3).

<sup>6</sup> See Rule 13(f)(A) and (C).

<sup>7</sup> See, e.g., Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at [www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwfiw](http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwfiw)).

<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>11</sup> 17 CFR 200.30-3(a)(12).

buy or sell a stated amount of a security that is to be traded at the best price obtainable without trading through the NBBO.

The Exchange proposes one difference for the NYSE version of the rule, which is to provide that the proposed definition is intended only for orders eligible for automatic execution. Rule 1000(a) provides that an automatically executing order shall receive an immediate, automatic execution against orders reflected in the Exchange published quotation and orders in the Exchange book. However, automatic executions are not available for securities if the closing price for a security, or if the security did not trade, the closing bid price of the security on the immediate previous trading day is \$10,000 or more (*i.e.*, “high-priced securities”).<sup>8</sup> Because the proposed new functionality relating to Market Orders would not be available for high-priced securities, the Exchange proposes to keep the current definition of Market Orders as proposed subsection (D) of Rule 13(a)(1) and specify that this subsection of the rule is only for Market Orders that are not eligible for automatic execution.

Proposed Rule 13(a)(1)(A) would define certain terms for purposes of Market Orders. Specifically, because the Exchange is proposing to adopt rule text based on NYSE Arca Equities Rule 7.31P(a)(1), which uses terms defined in the NYSE Arca Equities rules, the Exchange proposes to add the following defined terms to Rule 13:

- Proposed Rule 13(a)(1)(A)(i) would define the term “Away Market,” for purposes of Market Orders, to mean any exchange with which the Exchange maintains an electronic linkage and which provides instantaneous responses to orders routed from the Exchange. This proposed definition is based on NYSE Arca Equities Rule 1.1(ffP), which defines the term “Away Market” to mean any exchange, alternative trading system (“ATS”) or other broker-dealer (1) with which the NYSE Arca Marketplace maintains an electronic linkage and (2) which provides instantaneous responses to order routed from the NYSE Arca Marketplace. Because the Exchange does not route to any ATSS or other broker-dealers for execution, the Exchange would not

include a reference to ATSS or broker-dealers in its definition of Away Market.

- Proposed Rule 13(a)(1)(A)(ii) would define the term “NBBO” to mean the national best bid or offer and the terms “NBB” to mean the national best bid and “NBO” to mean the national best offer. These proposed definitions are identical to those definitions in NYSE Arca Equities Rule 1.1(dd).

- Proposed Rule 13(a)(1)(A)(iii) would define the term “working price” to mean the price at which an order is eligible to trade at any given time. This proposed definition is based on NYSE Arca Equities Rule 7.36P(a)(3), which defines the term “working price” to mean the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order. The Exchange does not propose to include the last clause of the NYSE Arca Equities definition because the Exchange is proposing the definition of working price only for purposes of Market Orders, which do not include a limit price and which are not displayed.

- Proposed Rule 13(a)(1)(A)(iv) would define the term “MPV” to mean the minimum price variation for quoting and entry of orders as specified in Supplementary Material .10 to Rule 62. The Exchange uses the same pricing increments as NYSE Arca Equities.<sup>9</sup>

Proposed Rule 13(a)(1)(B) would specify how a Market Order would operate during continuous trading. The Exchange would specify how Market Orders would participate in auctions in proposed Rule 13(a)(1)(C), described in greater detail below.

As proposed in Rule 13(a)(1)(B)(i), a Market Order would be rejected on arrival or cancelled if resting if there is no contra-side NBBO or if the best protected quotations are or become crossed. This proposed rule text is based on the second sentence of NYSE Arca Equities Rule 7.31P(a)(1), which provides that a Market Order must be designated Day and will be rejected on arrival or cancelled if resting if there is no contra-side NBBO. Because of technology differences between how the Exchange operates and how NYSE Arca Equities operates on the Pillar trading platform, the Exchange proposes that if protected quotations are or become crossed, the Exchange would reject newly arriving Market Orders or cancel resting unexecuted Market Orders.

Proposed Rule 13(a)(1)(B)(ii) would provide that:

<sup>9</sup> See NYSE Arca Equities Rule 7.6 (defining minimum price variation as \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for quoting and entry is \$0.0001).

On arrival, a Market Order to buy (sell) is assigned a working price of the NBO (NBB) and will trade with all sell (buy) orders on the Exchange priced at or below (above) the NBO (NBB) before routing to the NBO (NBB) on an Away Market. The quantity of a Market Order to buy (sell) not traded or routed will remain undisplayed on the Exchange at a working price of the NBO (NBB) and be eligible to trade with incoming sell (buy) orders at that price. When the NBO (NBB) is updated, the Market Order to buy (sell) will be assigned a new working price of the updated NBO (NBB) and will trade with all sell (buy) orders on the Exchange priced at or below (above) the updated NBO (NBB) before routing to the updated NBO (NBB) on an Away Market. Such assessment will continue at each new contra-side NBBO until the order is filled or a Trading Collar is reached. If the NBBO becomes locked or crossed either on arrival or while the order is held undisplayed, the Market Order to buy (sell) will be assigned a working price of the NBB (NBO).

This proposed rule text is based on NYSE Arca Equities Rule 7.31P(a)(1)(A), which provides:

On arrival, a Market Order to buy (sell) is assigned a working price of the NBO (NBB) and will trade with all sell (buy) orders on the NYSE Arca Book priced at or below (above) the NBO (NBB) before routing to the NBO (NBB) on an Away Market. The quantity of a Market Order to buy (sell) not traded or routed will remain undisplayed on the NYSE Arca Book at a working price of the NBO (NBB) and be eligible to trade with incoming sell (buy) orders at that price. When the updated NBO (NBB) is displayed, the Market Order to buy (sell) will be assigned a new working price of the updated NBO (NBB) and will trade with all sell (buy) orders on the NYSE Arca Book priced at or below (above) the updated NBO (NBB) before routing to the updated NBO (NBB) on an Away Market. Such assessment will continue at each new contra-side NBBO until the order is filled or a Trading Collar is reached. If the NBBO becomes locked or crossed while the order is held undisplayed, the Market Order to buy (sell) will be assigned a working price of the NBB (NBO).

The Exchange proposes a non-substantive difference to use the term “Exchange” instead of “NYSE Arca Book” in proposed Rule 13(a)(1)(B)(ii). The Exchange also proposes a change from the NYSE Arca Equities Rule to specify that a Market Order would be priced to the same-side NBBO when the NBBO is crossed both on arrival and when resting. To this point, as described above, if the protected quotations are crossed, a resting Market Order would be cancelled, which differs from current NYSE Arca Equities behavior. However,

<sup>8</sup> See Rule 1000(a)(iii). There is currently one high-priced security listed on the Exchange, Berkshire Hathaway Inc. Class A (BRK-A). Automatic executions are also not available when trading in a security has been halted or if a block-sized transaction, as defined in Rule 127.10 that involves orders in the Exchange book is being reported manually. See Rule 1000(a)(i)–(ii).

if the NBBO is crossed, but the best protected quotations are not crossed, the Exchange would price the Market Order based on the same-side NBBO, which is how Market Orders operate on NYSE Arca Equities.<sup>10</sup> Finally, the Exchange proposes a change from the NYSE Arca Equities rule to provide that a Market Order will be assigned a new working price when the NBBO is updated, and not when an updated NBBO is displayed. The proposed Exchange functionality is identical to that of NYSE Arca Equities, but the Exchange believes its proposed rule language clarifies that it would incorporate updates to the NBBO based on executions at the Exchange that have not yet been displayed.

Proposed Rule 13(a)(1)(B)(iii) would provide that unexecuted Market Orders that are held undisplayed in Exchange systems would not be available to the DMM either as part of aggregated interest at a price point or in disaggregated form and would not participate in intra-day manual executions. The Exchange proposes this rule text to reflect the Exchange's unique trading model, which, unlike NYSE Arca Equities, includes a DMM assigned to each security that trades on the Exchange.<sup>11</sup> Unless otherwise specified, DMMs have access to specified order information while on the Trading Floor.<sup>12</sup> Because unexecuted Market Orders would be held undisplayed at the contra-side NBBO, the Exchange proposes to treat such unexecuted orders similarly to other undisplayed orders and would not make information about them available to the DMM during intra-day trading. Accordingly, proposed Rule 13(a)(1)(B)(iii) is based on Rule 70(f)(ii) regarding the information available to a DMM regarding a Non-Display Reserve e-Quote that has been designated to be excluded from the DMM. In addition, because information about unexecuted Market Orders would not be available to DMMs when the Exchange is open for

continuous trading, the Exchange further proposes to provide that such orders would not participate in intra-day manual executions, *i.e.*, executions facilitated by the DMM while on the Trading Floor.<sup>13</sup>

Proposed Rule 13(a)(1)(C) would specify how Market Orders would participate in auctions. Because auctions on the Exchange are facilitated by DMMs, the Exchange proposes that Market Orders that have not been assigned a working price based on the contra-side NBBO or, during a halt, pause or trading suspension, have not yet traded, would continue to participate in an auction as Market Orders currently do and would continue to be included in the information made available to DMMs and the public no differently than today. Accordingly, as proposed in Rule 13(a)(1)(C)(i), a Market Order that was entered before the opening of trading, or was entered before or during a halt, pause or suspension in trading, would be made available to the DMM as provided for in Rule 104(a)(2) and (3) and would be included in Order Imbalance Information<sup>14</sup> and allocated in the applicable auction as a Market Order. This would include all opening and reopening auctions,<sup>15</sup> and closing auctions that follow a halt, pause or suspension in trading.<sup>16</sup> In addition, if a Market Order arrives during continuous trading, is held undisplayed and assigned a working price, and then that security enters a halt or pause, such Market Order will revert and be considered an unpriced Market Order for purposes of allocation in the reopening auction.

By contrast, because a Market Order entered during continuous trading that remains unexecuted when the Exchange transitions to the closing transaction would have been assigned a working price, the Exchange proposes to handle such unexecuted Market Orders more similarly to a Limit Order in the closing transaction. Accordingly, as proposed in Rule 13(a)(1)(C)(ii), a Market Order that was entered during continuous trading and remains unexecuted for the close would be made available to the DMM as provided for in Rule 104(a)(3) and

would be included in Order Imbalance Information and allocated in the closing transaction as a Limit Order with its limit price being the last working price assigned to the unexecuted Market Order.

The Exchange proposes to address how short sale Market Orders would be allocated in an auction in proposed Rule 13(a)(1)(C)(iii). Similar to unexecuted Market Orders that would participate in the closing transaction as a Limit Order, during a Short Sale Period, as defined in Rule 440B(d), a short sale Market Order would also participate in any auction as a Limit Order, but with the limit price being the last Permitted Price before the applicable transaction. Accordingly, proposed Rule 13(a)(1)(C)(iii) would provide that during a Short Sale Period, as defined in Rule 440B(d), a short sale Market Order re-priced to a Permitted Price, as defined in Rule 440B(e), would be made available to the DMM as provided for in Rules 104(a)(2) and (3) and would be included in Order Imbalance Information and allocated in the applicable auction as a Limit Order. This proposed behavior would be applicable for any auction.<sup>17</sup>

The Exchange also proposes to amend Rule 72 to specify how an unexecuted Market Order would be allocated. First, the Exchange proposes to amend Rule 72(c)(i), which currently provides that an automatically executing order will trade first with displayable bids (offers) and if there is insufficient displayable volume to fill the order, will trade next with non-displayable interest. The Exchange proposes to amend this rule to provide that an automatically executing order would trade first with any unexecuted Market Orders, which would be allocated in time priority, and then with displayable bids (offers).

Second, the Exchange proposes to amend Rule 72(c)(iii), which currently describes how in any execution at the Exchange BBO, a participant who has established priority under Rule 72(a) will receive fifteen percent of the volume of such executed amount or a minimum of one round lot, whichever is greater, until such setting interest has received a complete execution of its eligible priority interest. The Exchange proposes to amend this rule text to add that such priority allocation would be

<sup>10</sup> The NBBO may differ from the best protected quotations ("PBBO") because the NBBO includes manual quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37). By contrast, a protected quotation is an automated quotation that is the best bid or offer of a national securities exchange. 17 CFR 242.600(b)(57)(iii). In addition, when the Exchange routes interest to protected quotations, it adjusts the PBBO, but does not adjust the NBBO. See Securities Exchange Act Release No. 74410 (March 2, 2015), 80 FR 12240 (March 6, 2015) (SR-NYSE-2015-09).

<sup>11</sup> See Rule 2(i) (defining the term "Designated Market Maker" or "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM).

<sup>12</sup> See Rule 104(j)(ii).

<sup>13</sup> By contrast, the Exchange proposes that the participation of Market Orders would not change for auctions on the Exchange, including that availability of Market Orders would be made known to the DMM. See proposed Rule 13(a)(1)(C)(ii). DMMs are responsible for facilitating openings and reopenings and the close of trading. To comply with this requirement, the Exchange makes available to DMMs and DMM unit algorithms aggregate order information. See NYSE Rule 104(a)(2) and (3).

<sup>14</sup> See Rules 15(c) and 123C(6).

<sup>15</sup> See Rule 115A(a)(i).

<sup>16</sup> See Rule 123C(7).

<sup>17</sup> This proposed behavior for short sale Market Orders on the Exchange is based on Commentary .01(a) to NYSE Arca Equities Rule 7.35P, which provides that for purposes of pricing an auction and ranking orders for allocation in an auction, sell short Market Orders that are adjusted to a Permitted Price (as defined in Rule 7.16P(f)) will be processed as Limit Orders ranked Priority 2-Display Orders and will not be included in the Market Imbalance.

after any unexecuted Market Orders have been satisfied.

Both of these proposed amendments to Rule 72(c) are based on NYSE Arca Equities Rule 7.31P(a)(1), which provides that unexecuted Market Orders are ranked Priority 1—Market Orders. As defined in NYSE Arca Equities Rule 7.36P(e), at each price point, unexecuted Market Orders that are ranked Priority 1—Market Orders have priority over all other same-side orders with the same working price. The Exchange proposes to provide similar priority ranking of unexecuted Market Orders, which would harmonize how Market Orders behave on the two markets.

To further harmonize the behavior of Market Orders on the Exchange with the behavior of Market Orders on NYSE Arca Equities, the Exchange proposes to amend Rule 80C(a)(5)(A) regarding how Market Orders would be handled if they cannot be fully executed at or within the Limit Up-Limit Down Price Bands.<sup>18</sup> Currently, the Exchange would display the unexecuted portion of a buy (sell) market order at the Upper (Lower) Price Band if it cannot be fully executed at or within the Price Bands. The Exchange proposes to amend this Rule to provide that the Exchange would cancel the unexecuted portion of the buy (sell) market order if it cannot be fully executed at or within the Price Bands and would notify the member organization of the reason for such cancellation. This proposed rule text is based on NYSE Arca Equities Rule 7.11P(a)(5)(A), which provides that any untraded quantity of Market Orders that cannot be traded at prices at or within the Price Bands will be cancelled and the ETP Holder will be notified of the reason for such cancellation. In addition, because the Exchange does not offer Market Pegging Interest, the Exchange proposes a non-substantive change to delete the text in Rule 80C(a)(5)(E) relating to Market Pegging Interest and replace it with the text “Reserved.”<sup>19</sup>

In addition, the Exchange proposes to harmonize the behavior of sell short Market Orders during a Short Sale Period with how such orders are handled on NYSE Arca Equities. Currently, Rule 440B(e) provides that short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid (“Permitted Price.”). Because the Exchange proposes

that unexecuted Market Orders would not be displayed, the Exchange proposes to amend Rule 440B(e) to provide that any unexecuted or any unexecuted portion of a short sale Market Order re-priced to a Permitted Price would rest on the Exchange’s Book and be non-displayed and that they would be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.<sup>20</sup> This proposed rule change is based on NYSE Arca Equities Rule 7.16P(f)(5)(C), which provides that Market Orders will have a working price adjusted to a Permitted Price and will continuously adjust to a Permitted Price as the NBB moves both up and down.

The Exchange also proposes to amend how Trading Collars would operate for Market Orders. Because of technology differences between the Exchange and NYSE Arca Equities, the Exchange proposes to keep the current behavior for Trading Collars, which use the NBBO as a reference price, rather than adopt the NYSE Arca Equities manner of determining Trading Collars, which use the consolidated last sale price as the reference price. Currently, Rule 1000(c) provides that Trading Collars are applicable to incoming market orders. Because as proposed, Market Orders would be re-evaluated for an execution or routing opportunity with each update to the NBBO, the Exchange proposes to apply the Trading Collar evaluation with each evaluation to trade or route an unexecuted Market Order. Accordingly, the Exchange proposes to amend Rule 1000(c) to provide that an unexecuted Market Order would be subject to a Trading Collar upon each evaluation to trade or route such order.<sup>21</sup>

Finally, the Exchange proposes to amend Supplementary Material .10 to Rule 13 to specify how unexecuted Market Orders would be included in the definitions of “best-priced sell interest” and “best-priced buy interest.” These terms are used to describe how a Limit Order designated with an Add Liquidity Only (“ALO”) Modifier will be re-priced when such Limit Order, at the time of entry, is marketable against Exchange interest or would lock or cross a protected quotation.<sup>22</sup> Specifically, a Limit Order designated ALO that, at the time of entry, is marketable against Exchange interest will be re-priced and displayed one MPV below the best-priced sell interest (for bids) or above

the best-priced buy interest (for offers). Supplementary Material .10 to Rule 13 provides that the term best-priced sell (buy) interest refers to the lowest-priced sell (highest-priced buy) interest against which incoming buy (sell) interest would be required to execute with and/or route to, including Exchange displayed offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized sell (buy) interest, and protected offers (bids) on away markets, but does not include non-displayed sell (buy) interest that is priced based on the PBBO. The Exchange proposes to amend Supplementary Material .10 to Rule 13 to add unexecuted Market Orders to the list of interest that would be included in the term “best-priced sell interest” and “best-priced buy interest.” Accordingly, if there is an unexecuted Market Order being held undisplayed at a price, an incoming opposite-side Limit Order designated ALO would be re-priced and displayed one MPV away from the working price of such unexecuted Market Order.

#### Proposed Deletions

The Exchange proposes to reduce complexity by reducing order type combinations that are infrequently used. As proposed, the Exchange proposes to eliminate the functionality to combine a Market Order with an IOC, buy “minus,” or sell “plus” instruction.

First, to eliminate IOC instructions for Market Orders, the Exchange proposes to amend Rules 13(b)(3)(A) (renumbered as Rule 13(b)(2)(A)) regarding Regulation NMS-compliant IOC Orders and 13(b)(3)(B) (renumbered as Rule 13(b)(2)(B)) regarding NYSE IOC Orders to delete the references to Market Orders in the rule text. The Exchange further proposes to clarify Rule 13(b)(1) regarding the Day Modifier to specify that Market Orders can be designated Day, which is current functionality. The Exchange also proposes non-substantive, technical changes to change the subsection numbering from Rule 13(b)(3) to Rule 13(b)(2) and to capitalize the term “Order” in Rule 13(b)(2)(A).

Second, to eliminate tick sensitive instructions for Market Orders, the Exchange proposes to amend Rule 13(f)(4) to delete references to Market Orders and to make other non-substantive changes. Rule 13(f)(4)(A) currently provides:

A Market Order to sell “plus” is a Market Order to sell a stated amount of a stock provided that the price to be obtained is not lower than the last sale if the last sale was a “plus” or “zero plus” tick, and is not lower than the last sale plus the minimum fractional change in the stock if the last sale

<sup>18</sup> The Exchange also proposes a non-substantive amendment to Rule 440B(e) to capitalize the term “Market Order.”

<sup>19</sup> The Exchange also proposes a non-substantive amendment to Rule 1000(c) to capitalize the terms “Market Order” and “Limit Order.”

<sup>20</sup> See Rule 13(e)(1)(B).

<sup>18</sup> See Rule 80C.

<sup>19</sup> The Exchange also proposes a non-substantive amendment to Rule 80C(a)(5)(A) to capitalize the term “Market Order.”

was a “minus” or “zero minus” tick. A Limit Order to sell “plus” would have the additional restriction of stating the lowest price at which it could be executed.

The Exchange proposes to delete references to Market Orders in the first sentence. In addition, the Exchange proposes to delete the last sentence and instead incorporate the concept of that sentence into the prior sentence. The proposed new rule text would provide:

An order with an instruction to sell “plus” will not trade at a price [sic] lower than the last sale if the last sale was a “plus” or “zero plus” tick, and is not [sic] lower than the last sale plus the minimum fractional change in the stock if the last sale was a “minus” or “zero minus” tick, subject to the limit price of an order, if applicable.

The Exchange proposes a similar change to Rule 13(f)(4)(C), which currently provides:

A Market Order to buy “minus” is a Market Order to buy a stated amount of a stock provided that the price to be obtained is not higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick. A Limit Order to buy “minus” would have the additional restriction of stating the highest price at which it could be executed.

The proposed new rule text, which would be set forth in Rule 13(f)(4)(B), would provide:

An order with an instruction to buy “minus” will not trade at a price [sic] higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not [sic] higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick, subject to the limit price of an order, if applicable.

The Exchange further proposes to streamline the rule by deleting current Rule 13(f)(4)(B) and combining it with current Rule 13(f)(4)(D), which would be re-numbered as Rule 13(f)(4)(C).<sup>23</sup> Proposed Rule 13(f)(4)(C) would also specify which orders may be combined with sell “plus” and buy “minus” instructions. Accordingly, as proposed, Rule 13(f)(4)(C) would provide:

Sell “plus” and buy “minus” instructions are available for Limit Orders, LOO Orders, LOC Orders, and MOC Orders. Orders with a buy “minus” or sell “plus” instruction that are systemically delivered to Exchange systems will be eligible to be automatically executed in accordance with, and to the extent provided by, Rules 1000–1004, consistent with the order’s instructions.

As noted above, sell “plus” and buy “minus” instructions, also referred to as “tick-sensitive instructions,” are currently available for Market Orders, but are also available for MOO and LOO Orders<sup>24</sup> and MOC and LOC Orders.<sup>25</sup> The Exchange proposes to clarify proposed Rule 13(f)(4)(C) to specify which orders could include tick-sensitive instructions. As proposed, Limit Orders, LOO Orders, LOC Orders and MOC Orders would continue to be eligible to be combined with a tick-sensitive instruction. As noted above, Market Orders would not be eligible to include tick-sensitive instructions, and the Exchange proposes to also exclude MOO Orders from including tick-sensitive instructions. To reflect these changes, the Exchange also proposes to amend Rule 13(c)(5) and Rule 115A(a)(1)(A) and (B) to delete references to tick-sensitive market and MOO orders. The Exchange also proposes a non-substantive amendment to Rule 115A(1)(A) to capitalize the term “Market Order.”

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Because of the technology changes associated with this proposed rule change, the Exchange will announce by Trader Update the implementation date.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>26</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>27</sup> in particular, because 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, 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.

The Exchange believes the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would simplify how Market Orders would function on the Exchange by harmonizing the behavior of Market Orders with how they operate on the Pillar trading platform on NYSE Arca Equities. The Exchange further believes that the proposed changes would protect investors and the public interest because they are designed to

prevent a Market Order from sweeping through multiple price points on the Exchange book, which may result in a Market Order executing at prices away from the prevailing quote. As proposed, a Market Order would be held undisplayed at the last contra-side NBBO price and wait for a pricing update before being eligible to trade or route again, thus reducing the potential for a Market Order to sweep through multiple price points on the Exchange’s book. Instead, by waiting for updates to the NBBO before becoming eligible to trade again, a Market Order would have additional opportunity to route to Away Markets before sweeping through multiple price points on the Exchange’s book.

The Exchange further believes that eliminating IOC and tick-sensitive instructions for Market Orders would remove impediments to and perfect a national market system by simplifying functionality and complexity of its order types. Specifically, these are order type combinations that are infrequently used. For example, year-to-date, the Exchange and its affiliated exchange NYSE MKT LLC (“NYSE MKT”), which has identical rules, have not received any MOO Orders with tick-sensitive instructions, have not received any Market Orders with sell plus instructions, and have received only 17 Market Orders with buy minus instructions. Similarly, year-to-date, the Exchange and NYSE MKT have received only 20 Market Orders with IOC instructions. Accordingly, the Exchange believes that eliminating these order types would be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the removal of complex functionality.

The Exchange further believes that deleting corresponding references in Exchange rules to deleted order types also would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange’s rulebook and better understand the orders types available for trading on the Exchange. Removing obsolete cross references also furthers the goal of transparency and adds clarity to the Exchange’s rules.

### *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 change is not designed to address any competitive issue but

<sup>23</sup> Consistent with the proposed re-numbering of Rule 13(f)(4), current Rule 13(f)(4)(E) would be re-numbered as Rule 13(f)(4)(D), with no changes to the rule text.

<sup>24</sup> See Rule 115A(1)(A) and (B).

<sup>25</sup> See Rule 123C(7).

<sup>26</sup> 15 U.S.C. 78f(b).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

would rather harmonize the treatment of Market Orders between the Exchange and NYSE Arca Equities and remove complex functionality and obsolete cross-references, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

*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) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</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>30</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>31</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 so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the operative delay would promote the protection of investors and the public interest because the proposed rule change would reduce the potential for a Market Order to trade at prices away from the prevailing quote and at potentially worse prices for the investor. Likewise, the Exchange believes that

eliminating IOC and tick-sensitive instructions for Market Orders, without delay, would be consistent with the protection of investors and the public interest because these instructions are rarely used and their elimination would simplify the Exchange's offering of order types. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, because the proposal would diminish the likelihood of Market Orders trading at prices that would be disadvantageous to investors, and because it would simplify the Exchange's order types by eliminating rarely used complex order functionality. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>32</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>33</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-NYSE-2016-35 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2016-35. This file number should be included on the subject line if email is used. To help the

<sup>32</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 78s(b)(2)(B).

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 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-NYSE-2016-35 and should be submitted on or before June 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77876; File No. SR-MIAX-2016-08]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Granting Approval of Proposed Rule Change to Amend the Exchange's Amended and Restated By-Laws Relating to the Removal of a Board Restriction**

May 20, 2016.

**I. Introduction**

On March 29, 2016, Miami International Securities Exchange LLC (the "Exchange" or "MIAX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>34</sup> 17 CFR 200.30-3(a)(12).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</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>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).