

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

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Deputy Secretary.

[FR Doc. 2016-20884 Filed 8-30-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78673; File No. SR-NYSEMKT-2016-79]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Relating to Pre-Opening Indications and Opening Procedures

August 25, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 16, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I 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 its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. The proposed rule change is available on the Exchange’s Web site at 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 its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. In particular, the Exchange proposes to:

- Make changes to the rules related to the pre-opening indication process by:
 - Amending Rules 15—Equities (“Rule 15”) and 123D—Equities (“Rule 123D”) to consolidate the requirements for publication of pre-open indications in a single rule (Rule 15);
 - changing the conditions in which a Designated Market Maker (“DMM”) is required to publish a pre-opening indication in a security to an anticipated 5% move from a security’s reference price and, during extreme market-wide volatility, an anticipated 10% from a security’s reference price; and
 - providing for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications.
- Make changes to Rule 123D related to the opening process by:
 - Incorporating all procedures relating to openings, other than pre-opening indications, in Rule 123D; and
 - Specifying that DMMs may effect an opening of a security electronically within specified percentage and volume parameters, which would be doubled during extreme market-wide volatility; and
 - providing for the CEO of the Exchange to temporarily suspend price and volume limitations for a DMM automated open or the requirement for prior Floor Approval before opening or reopening a security.
- Delete Rule 48—Equities (“Rule 48”).
- Make conforming changes to Rules 80C—Equities (“Rule 80C”) and 9217.

The Exchange believes that the proposed changes will enhance transparency regarding the Exchange’s opening process by specifying new parameters for how the opening at the Exchange would be effectuated on trading days experiencing extreme market-wide volatility, which would include both additional information before the open through the use of new parameters for pre-opening indications and expanded ability for DMMs to

effectuate an opening electronically. The proposed rule changes are designed to preserve the Exchange’s existing model, which values human touch when opening securities with significant price or volume disparity, while at the same time promoting automated measures to have as many securities open as close to 9:30 a.m. as feasible, even during extreme market-wide volatility.

These proposed changes are based on recent amendments to the rules of the New York Stock Exchange LLC (“NYSE”).⁴

Background

The Exchange’s current pre-opening procedures are outlined in Rules 15 (Pre-Opening Indications), 48 (Exemptive Relief—Extreme Market Volatility Condition), and 123D (Openings and Halts in Trading).

Rule 15(a) provides that if the opening transaction in a security will be at a price that represents a change of more than the “applicable price change” specified in the Rule,⁵ the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (“Rule 15 Indication”), which represents a price range in which a security is anticipated to open.

A Rule 15 Indication is published on the Exchange’s proprietary data feeds only and includes the security and the price range within which the DMM anticipates the opening transaction will occur, and would include any orally-represented Floor broker interest for the open. The applicable price ranges for determining whether to publish a Rule 15 Indication are based on five different price buckets and are expressed in dollar and percentage parameters:

⁴ See Securities Exchange Act Release No. 78228 (July 5, 2016), 81 FR 44907 (July 11, 2016) (SR-NYSE-2016-24) (“NYSE Approval Order”); and Securities Exchange Act Release No. 78512 (August 9, 2016) (SR-NYSE-2016-53) (Notice of Filing).

⁵ In current Rule 15, other than for certain American Depositary Receipts (“ADRs”), the “applicable price change” is measured from a security’s last reported sale price on the Exchange, the security’s offering price in the case of an initial public offering (“IPO”), or the security’s last reported sale price on the market from which it is being transferred. For an ADR where the trading day of the underlying security in the primary foreign market for the ADR concludes after the previous day’s trading in the U.S. has ended, the “applicable price change” is measured from closing price of the primary foreign market. For an ADR where the primary foreign market on which the underlying security is open for trading at the time of the opening of the Exchange, the “applicable price change” is measured from parity with the last sale price of the underlying security.

⁸ 17 CFR 200.30-3(a)(83).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Rule 123D also mandates that pre-opening indications be published if the opening price would result in a significant price change from the previous close or if the opening is delayed past 10:00 a.m. Eastern Time (“Rule 123D Mandatory Indication”). The DMM is responsible for publishing the Rule 123D Mandatory Indication and, when determining the price range for the indication, takes into consideration Floor broker interest that has been orally entered and what, at a given time, the DMM anticipates the dealer participation in the opening transaction would be. Rule 123D Mandatory Indications are published to the Consolidated Tape and proprietary data feeds. The applicable price ranges for determining whether an opening price would be a “significant” price change requiring a Rule 123D Mandatory Indication are based on three price buckets and are expressed in a mixture of dollar (1 point = one dollar) and percentage parameters:

Previous NYSE closing price	Price change (equal to or greater than)
Under \$10.00	1 point.
\$10–\$99.99	the lesser of 10% or 3 points.
\$100 and Over ...	5 points.

Rule 48 provides that a “qualified Exchange officer”⁶ can invoke an extreme market volatility condition at the open (or reopen of trading following a market-wide halt of securities) during which time the Exchange can suspend the requirements of Rules 15 and 123D, and in particular, the requirement to publish pre-opening indications. Rule 48, which was first adopted by NYSE, is intended to be invoked only in those situations where the potential for extreme market volatility would likely impair Floor-wide operations at the Exchange by impeding the fair and orderly opening or reopening securities.⁷

⁶ A “qualified Exchange officer” means the Chief Executive Officer of ICE, or his or her designee, or the Chief Regulatory Officer of the Exchange, or his or her designee.

⁷ See Securities Exchange Act Release No. 56920 (December 6, 2007), 72 FR 70915 (December 13, 2007) (SR–NYSE–2007–111) (“NYSE Rule 48 Notice of Filing”).

Finally, Rule 123D, which in addition to setting forth requirements for certain pre-opening indications, also specifies procedures relating to openings, including that it is the responsibility of each DMM to ensure that securities open as close to the opening bell as possible and that securities can be opened on a trade or a quote. The rule further provides that openings may be effectuated manually or electronically.

Proposed Rule Change

The Exchange proposes to amend Rules 15, 48, and 123D to introduce greater efficiency and transparency into its opening process by, among other things, consolidating its rules regarding pre-opening indications into a single rule (Rule 15), introducing a new, single percentage parameter for the publication of pre-opening indications that would double on volatile trading days, and consolidating opening procedures into Rule 123D, including specifying parameters of when a DMM may effect an opening electronically, and consolidating the procedures of Rule 48 into Rules 15 and 123D, as applicable. The Exchange also proposes conforming changes to Rules 80C and 9217.

Pre-Opening Indications

The Exchange proposes to make changes to the pre-opening indication process. The Exchange would consolidate the requirements relating to pre-opening indications into Rule 15(a)–(f). Because the Exchange proposes all new rule text in Rule 15(a)–(f), the Exchange proposes to delete paragraphs (a) and (b) of current Rule 15, re-number Rule 15(c) as Rule 15(g), delete rule text in Rule 123D(b) relating to mandatory indications, and amend the title of Rule 15 to add the phrase “and Opening Order Imbalance Information” so that the rule would be titled “Pre-Opening Indications and Opening Order Imbalance Information.” In amending Rule 15, the Exchange would establish new conditions for when DMMs are required to publish pre-opening indications.

Proposed Rule 15(a), entitled “Pre-Opening Indications,” would provide that a pre-opening indication would include the security and the price range within which the opening price is anticipated to occur. This proposed rule text is based on the last clause of the first sentence of current Rule 15(a), which provides that a pre-opening indication includes the security and the price range within which the opening transaction is anticipated to occur. Proposed Rule 15(a) would further provide that a pre-opening indication would be published via the securities

information processor (“SIP”) and proprietary data feeds. This proposed rule text is based on the way in which Rule 123D Mandatory Indications are currently published to both the SIP and proprietary data feeds. The Exchange proposes to use the term “securities information processor” instead of “Consolidated Tape” to use the term more commonly used in the industry.⁸

Proposed Rule 15(b), entitled “Conditions for Publishing a Pre-Open Indication,” would set forth the conditions in which a DMM is required to publish a pre-opening indication.

- Proposed Rule 15(b)(1) would provide that a DMM will publish a pre-opening indication before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range,” as defined in proposed Rule 15(d), from a specified “Reference Price,” as defined in proposed Rule 15(c), before the security opens. The procedures for publishing a pre-opening indication would be described in Rule 15(e). This proposed rule text is based on current Rule 15(a), which uses the term “applicable price range” and describes the reference prices used for purposes of current Rule 15(a). The Exchange proposes to define the “Reference Price” and “Applicable Price Range” in proposed Rules 15(c) and (d), described below. The requirement for DMMs to publish pre-opening indications is based on current Rule 15(a), which provides that the DMM shall issue a pre-opening indication if the conditions set forth in the rule are met.

- Proposed Rule 15(b)(2) would specify that when making a determination of what the opening transaction price would be, the DMM will take into consideration all interest eligible to participate in the opening transaction, including electronically-entered orders, the DMM’s own interest, and any interest represented orally in the crowd. This proposed rule text would be new and is designed to promote transparency in Exchange rules that all interest eligible to participate in the opening transaction is considered when publishing a pre-opening indication.

- Proposed Rule 15(b)(3) would provide that if a DMM is unable to publish a pre-opening indication for one or more securities due to a systems or technical issue, the Exchange may publish the pre-opening indication. This proposed rule text is based in part on current Rule 15(a), which provides that

⁸ See, e.g., Supplementary Material .01 to Rule 19—Equities.

either the DMM or the Exchange shall publish a pre-opening indication. The Exchange proposes a substantive difference to provide that the Exchange “may” rather than “shall” publish a pre-opening indication. As set forth in current Rule 123D(a)(5), which was added after the applicable rule text in Rule 15(a),⁹ if a DMM is unavailable to open a security and the Exchange opens trading, the Exchange will not publish a pre-opening indication. Because the Exchange is not obligated to publish pre-opening indications in such scenario, the Exchange proposes to make Rule 15(b)(3) consistent with that rule.

Proposed Rule 15(c), entitled “Reference Price,” would provide in paragraph (1) that the Reference Price for a security (other than an American Depository Receipt (“ADR”)) for purposes of the proposed rule would be:

- The security’s last reported sale price on the Exchange (proposed Rule 15(c)(1)(A));
- in the case of an IPO, the security’s offering price (proposed Rule 15(c)(1)(B)); or
- the security’s last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security’s first day of trading on the Exchange (proposed Rule 15(c)(1)(C)).

This proposed rule text is based on current Rule 15(a).¹⁰

Proposed Rule 15(c)(2) would provide that the Reference Price for ADRs for purposes of the proposed rule would be:

- The closing price of the security underlying the ADR in the primary foreign market in such security when the trading day of the primary foreign market concludes (proposed Rule 15(c)(2)(A)); or
- based on parity with the last sale price of the security underlying the ADR in the primary foreign market for such security when the trading day of the primary foreign market is open for trading at the time of the opening on the Exchange (proposed Rule 15(c)(2)(B)).

This proposed rule text is based on current Rule 15(b), with non-substantive differences for clarity and to use the defined term “Reference Price” in the proposed rule text.¹¹ Proposed Rule 15(c)(3) would further provide that the Reference Price for reopening a security following a halt would be the security’s

last reported sale price on the Exchange. The Exchange proposes to specify the Reference Price for reopening following a halt because the Reference Price would be the same for all securities, including ADRs, which would be trading on the Exchange.

Proposed Rule 15(d) would set forth the Applicable Price Ranges for determining whether a DMM is required to disseminate a pre-opening indication. The Exchange proposes to eliminate the current price buckets in Rules 15 and 123D and instead use a single percentage parameter as the Applicable Price Range for all securities, regardless of price of the security. As proposed, except during extreme market-wide volatility as set forth in proposed Rule 15(d)(2), a DMM would be required to publish a pre-opening indication if a security is expected to open at a price more than 5% away from the Reference Price. The Exchange believes that the proposed 5% parameter applicable to all securities would simplify and streamline the Exchange’s rules regarding required pre-opening indications by having a single percentage parameter that would be applied across all securities, rather than having different price buckets and percentage parameter ranges to track. The Exchange further believes that the proposed single percentage parameter would result in a similar number of pre-opening indications as are currently published pursuant to Rule 123D, while at the same time simplifying the process for DMMs.

For example, using trade data on NYSE for the month of October 2015, which was a month of relative trading stability and volumes, current Rule 123D Mandatory Indication parameters required indications for 15 securities on an average daily basis, which represents approximately 0.46% of the securities traded on the Exchange.¹² Applying the proposed new percentage parameter of 5% to the same October 2015 NYSE trade data, NYSE DMMs would have been required, on average, to publish 33 pre-opening indications, which represents 1.01% of securities that trade on NYSE. The Exchange believes that the incremental increase in number of pre-opening indications that would have been published pursuant to the proposed new single percentage

parameter would promote transparency in the opening of securities.¹³

Under current rules, the Exchange may suspend the requirement to publish pre-opening indications if a market-wide extreme market volatility condition is declared under Rule 48. This rule was adopted, in part, because of the manual nature of publishing pre-opening indications, and if DMMs were required to publish Rule 123D Mandatory Indications for multiple securities, it could delay the opening process and result in a large number of securities opening past 9:30 a.m. Eastern Time.¹⁴ Historically, the Exchange has declared such a condition if, before the opening of trading, the E-mini S&P 500 Futures are plus or minus 2% from the prior day’s closing price of the E-mini S&P 500 Futures. However, based on the events of the week of August 24, 2015, when the Exchange declared extreme market volatility conditions on August 24, 25, and 26, the Exchange appreciates that the absence of any pre-opening indications may leave a void in the information available for market participants to assess the price at which a security may open. Yet, because market-wide volatility would cause the price of most or all securities to move significantly away from the last sale price on the Exchange, the Exchange believes that the 5% price move appropriate for “normal” trading days would result in a DMM being required to disseminate more pre-opening indications than is feasible.

Accordingly, the Exchange proposes to amend its rules to provide that on trading days with extreme market-wide volatility, the Applicable Price Range would be 10%, or double the Applicable Price Range on regular trading days. Specifically, proposed Rule 15(d)(2) would provide that, if as of 9:00 a.m. Eastern Time (“ET”), the E-mini S&P 500 Futures are plus or minus 2% from the prior day’s closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 80B, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM would be

¹³ For purposes of this analysis, the Exchange compared the proposed new percentage parameters against only the current Rule 123D Mandatory Indications because these indications are more widely distributed via the SIP to market participants, and therefore more likely to be relied upon for purposes of assessing the opening price of a security on the Exchange. In addition, unlike Rule 15 Indications, a DMM is required to update Rule 123D Mandatory Indications, and thus this form of pre-opening indication is more likely to track to the actual opening price of a security.

¹⁴ See NYSE Rule 48 Notice of Filing, *supra* note 7 at 70916.

⁹ See Securities Exchange Act Release No. 76292 (Oct. 28, 2015), 80 FR 67830 (Nov. 3, 2015) (SR-NYSEMKT-2015-81).

¹⁰ See *supra* note 5.

¹¹ The seventh paragraph of Rule 123D(b), which the Exchange proposes to delete, similarly describes the reference price to be used for a foreign-listed security.

¹² Because NYSE MKT currently uses the same equities trading platform as NYSE, and because NYSE has a larger number of securities trading than NYSE MKT, the Exchange believes the NYSE data is representative of how the changes would impact NYSE MKT. Accordingly, all data reference points in this proposed rule change are based on NYSE data.

required to publish a pre-opening indication in a security if the price of that security is expected to open at a price more than 10% away from the Reference Price. By proposing to specify the conditions in which the Applicable Price Range would be 10%, the Exchange would promote transparency in Exchange rules so that market participants will know when the double-wide percentage parameter would be applied. Because the standard for extreme market-wide volatility would be specified in the rule, the Exchange would not need to provide separate notification on a trading day when the double-wide percentages would be applicable.

By proposing to specify in its rules that the Applicable Price Range would be 10%, rather than 5%, when the market is more volatile, the Exchange would require DMMs to disseminate pre-opening indications in those securities experiencing the greatest price movement. Under current rules, the Exchange's only option when the overall market is volatile is to lift the requirement for pre-opening indications under Rule 48. The Exchange also proposes to use the 10% percentage parameter when reopening securities following a market-wide trading halt under Rule 80B. The Exchange believes that widening the parameters for pre-opening indications following a market-wide trading halt would be appropriate because the reason for the trading halt was market-wide volatility, and thus the

reopening of securities would face similar pricing pressure as circumstances when there is pre-opening extreme market-wide volatility. The Exchange also proposes that it would have the authority to use the 10% Applicable Price Range when it is necessary or appropriate for the maintenance of a fair and orderly market. For example, if the E-mini S&P 500 Futures were not plus or minus 2% as of 9:00 a.m., but moved to that level between 9:00 and 9:30, it may be appropriate, for the maintenance of a fair and orderly market, to use widened percentage parameters.

To determine the percentage parameter that would be appropriate for trading days with extreme market-wide volatility, the Exchange reviewed NYSE trading data from August 24, 25, and 26, 2015 and assessed how many Rule 123D Mandatory Indications would have been required under the NYSE rules in place at that time, and how many pre-opening indications would have been required if a 5% and 10% percentage parameter were used on those days. Taking for example August 24, 2015, as set forth on Table 1 below, the NYSE data show that, had the NYSE not invoked Rule 48 lifting the requirement to publish Rule 123D Mandatory Indications, there would have been 638 securities (19% of securities) for which NYSE DMMs would have been required to publish Rule 123D Mandatory Indications. As set forth in Table 2 below, a 5% percentage parameter would have

required 1,460 pre-opening indications (44% of securities) on NYSE on August 24, 2015, more than twice as many as under the current parameters. As noted above, the Exchange believes that this would be too many pre-opening indications for DMMs to process on a trading day without impacting their ability to timely open their assigned securities.

By contrast, as set forth in Table 2 below, a 10% percentage parameter would have required pre-opening indications in 278 securities (8.4% of securities) on NYSE on August 24, 2015. While this number is still higher than the number of pre-opening indications that would have been published on NYSE on an average trading day in October using the 5% percentage parameter (see above), the Exchange believes that it strikes the appropriate balance between providing additional pre-opening information to investors and enabling the DMM's to timely open their assigned securities. As set forth in more detail in Tables 1 and 2 below, August 24 represents an outlier, even for days when there has been extreme market-wide volatility. For other days in 2015 when the NYSE declared an extreme market-wide volatility under Rule 48, as set forth in Tables 1 and 2 below, applying a 10% parameter would not materially change the number of pre-opening indications being published.

Table 1: Current Rule 123D Mandatory Indication Parameters

Exchange Closing Price	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015			8/25/2015			8/26/2015			1/27/2015		
		Total # of Stocks	# Stocks over Price or Volume Parameter	% Over Total	Total # of Stocks	# Stocks over Price or Volume Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total
Under \$10.00	\$1	3284	2	0.06%	3293	17	0.52%	3293	2	0.06%	3294	4	0.12%	3295	0	0.00%
\$10.00-\$99.99	Lessor of 10% or \$3	3284	7	0.21%	3293	499	15.15%	3293	48	1.46%	3294	15	0.46%	3295	4	0.12%
\$100 or greater	\$5	3284	6	0.18%	3293	122	3.70%	3293	31	0.94%	3294	20	0.61%	3295	8	0.24%
Total			15	0.46%		638	19.37%		81	2.46%		39	1.18%		12	0.36%

Table 2: Required Pre-Opening Indications with 5% and 10% Applicable Price Range

Exchange Closing Price	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015			8/25/2015			8/26/2015			1/27/2015		
		Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total	Total # of Stocks	# Stocks over Price Parameter	% Over Total
If S&P 500 e-Mini Futures Change Less Than +/-2%	5%	3283	33	1.01%	3293	1460	44.34%	3293	255	7.74%	3294	67	2.03%	3295	17	0.52%
If S&P 500 e-Mini Futures Change Greater Than +/-2%	10%	3283	8	0.24%	3293	278	8.44%	3293	51	1.55%	3294	18	0.55%	3295	2	0.00%

Proposed Rule 15(e), entitled "Procedures for publishing a pre-opening indication," would set forth proposed procedures a DMM would use

when publishing a pre-opening indication. As discussed below, these procedures are based on existing

procedures currently set forth in Rule 123D, with specified differences.

Proposed Rule 15(e)(1) would provide that publication of pre-opening

indications requires the supervision and approval of a Floor Governor.¹⁵ This proposed rule change is based on the sixth paragraph of Rule 123D(b). The Exchange proposes a substantive change in that the proposed rule would require the supervision and approval of a Floor Governor, rather than supervision and approval of a Floor Official, as set forth in the current rule. The Exchange would also eliminate the requirement in Rule 123D that if a situation involves a bank or brokerage stock, the approval of an Executive Floor Governor is required, and if an Executive Floor Governor is unavailable, a Floor Governor or Senior Floor Governor's approval is required. The Exchange believes that requiring Floor Governor approval for all securities would involve the appropriate review by an experienced Floor official, while at the same time simplifying the approval process to require a single category of Floor Official to approve a pre-opening indication regardless of the type of security.¹⁶

Proposed Rule 15(e)(2) would provide that a pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication. Proposed Rule 15(e)(3) would further require that if a pre-opening indication is a spread wider than \$1.00, the DMM should undertake best efforts to publish an updated pre-opening indication of \$1.00 or less before opening the security, as may be appropriate for the specific security. Proposed Rules 15(e)(2) and (e)(3) are based, in part, on the second and third bullet points following the ninth paragraph of Rule 123D(b),¹⁷ but with new rule text to simplify the requirements regarding updating pre-opening indications. With respect to proposed Rule 15(e)(3), for higher-priced securities, a pre-opening

indication wider than \$1.00 may be appropriate and it may not be necessary to narrow such indication any further, particularly since Opening Imbalance Information pursuant to Rule 15(c) (proposed Rule 15(g)) would also be disseminated regarding the security.

Proposed Rule 15(e)(4) would provide that, after publication of a pre-opening indication, the DMM must wait for the following minimum specified periods before opening a security:

- Proposed Rule 15(e)(4)(A) would provide that, when using the 5% Applicable Price Range specified in proposed Rule 15(d)(1), a minimum of three minutes must elapse between publication of the first indication and a security's opening. The rule would further provide that, if more than one indication has been published, a security may be opened one minute after the last published indication provided that at least three minutes have elapsed from the dissemination of the first indication. These first two sentences of proposed Rule 15(e)(4)(A) are based on rule text set forth in the twelfth and thirteenth paragraphs of current Rule 123D(b). Proposed Rule 15(e)(4)(A) would further provide that the DMM may open a security less than the required wait times after the publication of a pre-opening indication if the imbalance is paired off at a price within the Applicable Price Range. This proposed exception to the three-minute waiting requirement is new and is because the Exchange believes that, if equilibrium in price has been reached at a price within the Applicable Price Range, *i.e.*, at a price that would not have required a pre-opening indication in the first instance, there is no reason to require the DMM to further delay the opening of the security in an effort to attract offsetting interest.

- Proposed Rule 15(e)(4)(B) would provide that, when using the 10% Applicable Price Range specified in Proposed Rule 15(d)(2), a minimum of one minute must elapse between publication of the first indication and a security's opening and that if more than one indication has been published, a security may be opened without waiting any additional time. As discussed above, proposed Rule 15(d)(2) would provide for new percentage parameters for trading days with extreme market-wide volatility. Based on the analysis of NYSE trade data for August 24, 2015, even with the new percentage parameters, there is the potential for 278 pre-opening indications to be required on NYSE on an extremely volatile trading day. Because these pre-opening indications would be manually published by the DMM, the Exchange

believes that eliminating additional wait times would enable the DMMs to facilitate a speedy opening for a security that has been subject to a pre-opening indication on days with extreme market-wide volatility.

Proposed Rule 15(e)(5) would provide that, if trading is halted for a non-regulatory order imbalance, a pre-opening indication must be published as soon as practicable after the security is halted. This proposed rule text is based on the first sentence of the third bulleted paragraph following the ninth paragraph in Rule 123D(b), with a proposed substantive difference that a pre-opening indication should be published "as soon as practicable," rather than "immediately," after a security is halted. The Exchange believes that the proposed approach provides for more flexibility for the DMM to assess the order imbalance and publish a pre-opening indication that takes into consideration all applicable factors.

Proposed Rule 15(e)(6) would set forth the requirements for pre-opening indications when reopening a security following a trading pause under Rule 80C.¹⁸ Proposed Rule 15(e)(6)(A) would provide that a pre-opening indication may be published without prior Floor Governor approval. Proposed Rule 15(e)(6)(B) would provide that a pre-opening indication would not need to be updated before reopening the security, and the security may be reopened outside of any prior indication. Lastly, proposed Rule 15(e)(6)(C) would provide that the reopening is not subject to the minimum waiting time requirements in Proposed Rule 15(e)(4). Proposed Rules 15(e)(6)(A)–(C) are based on Rule 80C(b)(2)(A), with non-substantive differences to use different rule text cross-references.

Proposed Rule 15(f), entitled "Temporary Suspension of Pre-Opening Indications," would provide in proposed Rule 15(f)(1) that if the CEO of the Exchange determines that a Floor-wide event is likely to impact the ability of DMMs to arrange for a fair and orderly opening or reopening and that absent such relief, operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the requirement to publish pre-opening indications under Rule 15 prior

¹⁵ Rule 46—Equities describes the different categories of Floor Officials, which are Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors, and Executive Floor Governors. Floor Governors are generally more senior members of the Trading Floor or qualified Exchange employees and are also empowered to perform any duty of a Floor Official.

¹⁶ The Exchange would also be deleting the 14th through 16th paragraphs of Rule 123D(b) regarding Floor Official approval for "tape indications," which are Rule 123D Mandatory Indications. The Exchange believes that proposed Rule 15(e)(1) simplifies the approval process and obviates the need for this Rule 123D rule text.

¹⁷ The second bullet following the ninth paragraph of Rule 123D(b) requires that the number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical. The third bullet provides for similar requirements following a non-regulatory halt, and specifically that a final indication with a one point (one dollar) spread would be appropriate.

¹⁸ Rule 80C sets forth the Exchange's rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act known as the Limit Up/Limit Down ("LULD") Plan.

to opening or reopening a security following a market-wide trading halt.¹⁹

Proposed Rule 15(f) is based in part on Rule 48, which provides that a qualified Exchange officer may declare an extreme market volatility condition and temporarily suspend the requirements for pre-opening indications.²⁰ Because the Exchange would be specifying new percentage parameters for pre-opening indications on trading days with market-wide volatility, the Exchange does not believe that it needs Rule 48 in its current form. While the Exchange expects that its other proposed changes to DMMs' requirements related to pre-opening indications will make it unlikely that a complete suspension of pre-opening indications would be required, the Exchange believes it would be prudent for the CEO of the Exchange to retain the authority to temporarily suspend the requirements to make pre-opening indications for events that it cannot currently predict. Accordingly, rather than refer to extreme market-wide volatility as in current Rule 48, proposed Rule 15(f)(1) would refer to a Floor-wide event that could impact the fair and orderly opening or reopening of securities more generally.

Proposed Rule 15(f)(2), which is based on Rule 48(c)(1)(A), would specify the range of factors that the CEO of the Exchange would be required to consider in making any determination to temporarily suspend the requirement for pre-opening indications.²¹ In addition, similar to Rule 48(c)(1)(B) and 48(c)(1)(C), which requires the qualified Exchange officer to take its review "in consultation with relevant Exchange regulatory and operational employees that are officers of the Exchange, as

appropriate" and to inform Commission staff as promptly as practicable, proposed Rules 15(f)(2)(B) and (C) would require the CEO to notify the CRO of the Exchange in making a determination under proposed Rule 15(f)(1) and inform Commission staff as promptly as practicable that pre-opening indications under Rule 15 have been temporarily suspended. Proposed Rule 15(f)(3), which is based on Rule 48(c)(4), would provide that a temporary suspension under Rule 15(f) would be in effect only for the trading day on which it was declared.²² Finally, proposed Rule 15(f)(4) would provide that notwithstanding a temporary suspension of the requirement to publish pre-opening indications in a security under Rule 15, a DMM or the Exchange may publish a pre-opening indication for one or more securities. This proposed rule text, which is based in part on Rule 48(c)(5), would allow a DMM or the Exchange to publish a pre-opening indication, even if the rule were suspended.²³ Unlike Rule 48(c)(5), which specifies conditions when the DMM should still publish a pre-opening indication, proposed Rule 15(f)(3) would not require pre-opening indications, but rather, would allow them to be published even if the rule were temporarily suspended.

Because the Exchange has added new subsections to Rule 15, the Exchange proposes to renumber Rule 15(c) as Rule 15(g) and to add a header to this subsection of rule entitled "Opening Order Imbalance Information." In addition to re-designating the rule from Rule 15(c) to Rule 15(g), the Exchange proposes non-substantive differences to re-number the subsections of proposed Rule 15(g) to use the same numbering convention as proposed for proposed Rule 15(a)–(f), delete the phrase "the provisions of" in proposed Rule 15(g)(2)(B), and remove the reference to subparagraph (b) by deleting the phrase "or (b)."

The Exchange also proposes a substantive difference to change Rule 15(c)(3)(iii) (re-numbered as proposed Rule 15(g)(3)(C)) to increase the frequency with which the Exchange disseminates Order Imbalance

Information²⁴ beginning at 9:20 a.m. ET. Currently, under Rule 15(c)(3)(iii), Order Imbalance Information is disseminated approximately every 15 seconds between 9:20 a.m. ET and the opening of trading in that security. The Exchange proposes to disseminate Order Imbalance Information approximately every 5 seconds between 9:20 a.m. ET and the opening of trading in that security. The Exchange believes that increasing the frequency with which Order Imbalance Information is disseminated would provide market participants with additional updated pre-opening information, thus promoting transparency for the opening transaction.²⁵

Finally, the Exchange proposes to add new Supplementary Material .10 to Rule 15 providing that, unless otherwise specified in the proposed Rule,²⁶ references to an opening transaction include a reopening transaction following a trading halt or pause in a security. Currently, Rule 123D Mandatory Indications are required for both openings and reopenings. Because proposed Rule 15 indications would similarly be required for openings and reopenings following a halt or pause, the Exchange proposes to add Supplementary Material .10 to Rule 15.

DMM Automated Openings

As noted above, the process for publishing either Rule 15 Indications or Rule 123D Mandatory Indications is manual, and is generally followed by the DMM effecting the opening of a security manually rather than electronically. Consistent with this approach, the Exchange currently systemically blocks DMMs from opening a security electronically if the opening price would be outside of price

¹⁹ Pursuant to Rule 1—Equities, the CEO of the Exchange may formally designate one or more qualified employees of Intercontinental Exchange, Inc. ("ICE") to act in place of any person named in a rule as having authority to act under such rule in the event the named person in the rule is unavailable to administer that rule.

²⁰ Rule 48(d) defines a "qualified Exchange officer" for purposes of Rule 48 as the CEO of ICE, or his or her designee, or the Chief Regulatory Officer ("CRO") of the Exchange, or his or her designee. The Exchange proposes to streamline its rules to specify that only the CEO of the Exchange would have the authority to temporarily suspend the requirement for pre-opening indications. However, pursuant to Rule 1—Equities, the CEO could delegate this authority to other qualified ICE employees.

²¹ As provided for in Rule 48(c)(1)(A), these factors include volatility in the previous day's trading session, trading in foreign markets before the open, substantial activity in the futures market before the open, the volume of pre-opening indications of interest, evidence of pre-opening significant order imbalances across the market, government announcements, news and corporate events, and such other market conditions that could impact Floor-wide trading conditions.

²² Rule 48(c)(4) provides that a declaration of an extreme market volatility condition under Rule 48 shall be in effect only for the particular opening or reopen for the trading session on the particular day that the extreme market volatility condition is determined to exist.

²³ Rule 48(c)(5) provides that a declaration of an extreme market volatility condition shall not relieve DMMs from the obligation to make pre-opening indications in situations where the opening of a security is delayed for reasons unrelated to the extreme market volatility condition.

²⁴ Order Imbalance Information reflects real-time order imbalances that accumulate prior to the opening transaction on the Exchange and the price at which interest eligible to participate in the opening transaction may be executed in full. Order Imbalance Information disseminated pursuant to Rule 15(c) includes all interest eligible for execution in the opening transaction of the security in Exchange systems, *i.e.*, electronic interest, including Floor broker electronic interest, entered into Exchange systems prior to the opening. Order Imbalance Information is disseminated on the Exchange's proprietary data feeds. See Rule 15(c)(1).

²⁵ The Exchange also proposes to amend Rule 80C(b)(2)(A) to provide that the Order Imbalance Information disseminated during a Trading Pause would also be in approximately 5 second increments. The Exchange also proposes a non-substantive amendment to this rule text and to Rule 80C(b)(2) to add "Equities" to the internal rule reference.

²⁶ See, *e.g.*, proposed Rules 15(d)(2) (referring only to reopenings following a market-wide trading halt under Rule 80B) and 15(e)(6) (specifying different procedures when reopening trading following a trading pause).

parameters that are based on the price buckets and applicable price ranges specified in Rule 15(a). The Exchange similarly blocks DMMs from electronically opening a security if size of the opening transaction would be a significant volume, which similarly would indicate the potential need for manual oversight of the opening process.

Because the DMM is not obligated to open a security electronically, the Exchange has not historically specified in its rules the parameters for when the DMM may effect an opening electronically.²⁷ However, following the events of the week of August 24, 2015, the Exchange believes that specifying in Exchange rules the conditions in which a DMM is permitted to open a security electronically would provide greater transparency in Exchange rules. The Exchange therefore proposes to amend Rule 123D(a) to specify when a DMM may effect an opening electronically.

In specifying parameters for when a DMM may effectuate an opening electronically, the Exchange proposes to adopt parameters and requirements that would be structured similarly to the proposed parameters for new Rule 15 pre-opening indications, as discussed above. Because Rule 123D(a)(1) is applicable to reopenings, the Exchange proposes to add to Rule 123D(a) that unless otherwise specified, references to an open or opening in Rule 123D(a) also mean a reopening following a trading halt or pause in a security. This proposed rule text is based on the last sentence of Rule 123D(a)(2).²⁸ As proposed, this text would be applicable to Rules 123D(a)(1) and (a)(2) in addition to Rules 123D(a)(3)–(6), as currently provided for in Rule 123D(a)(2). The Exchange proposes to delete the last sentence of Rule 123D(a)(2) as duplicative of the proposed new rule text. The Exchange also proposes to add language to paragraph (1) of Rule 123D(a) to provide for DMM responsibilities regarding the reopening process. As proposed, Rule 123D(a)(1) would explicitly state that it

is the responsibility of each DMM to ensure that registered securities open as close to the end of a halt or pause, while at the same time not unduly hasty, particularly when at a price disparity from the last price on the Exchange.

The Exchange proposes new subsection numbering to Rule 123D(a)(1) to break out the third and fourth sentences of current Rule 123D(a)(1) to be proposed Rules 123D(a)(1)(A) and (B).²⁹ The Exchange proposes to add to proposed Rule 123D(a)(1)(B) that Exchange systems would not permit a DMM to open a security electronically if a DMM has manually entered Floor interest. This is how Exchange systems currently function and is similar to Rule 123C.10—Equities regarding when a DMM may close a security electronically.

The Exchange proposes to set forth the parameters for when a DMM may effect an opening electronically in new proposed Rules 123D(a)(1)(B)(i), (ii), and (iii):

- Proposed Rule 123D(a)(1)(B)(i) would provide that except under the conditions set forth in Rules 123D(a)(1)(B)(ii) and (iii), a DMM may not effect an opening electronically if; (a) the opening (but not reopening) transaction would be at a price more than 4% away from the Official Closing Price, as defined in Rule 123C(1)(e)—Equities, (b) the reopening transaction would be at a price more than 4% away from the last sale price on the Exchange; or (c) the matched volume for the opening transaction would be more than (1) 150,000 shares for securities with an average opening volume of 100,000 shares or fewer in the previous calendar quarter; or (2) 500,000 shares for securities with an average opening volume of over 100,000 shares in the previous calendar quarter. For purposes of this Rule, the calendar quarters will be based on a January 1 to December 31 calendar year.

- The Exchange believes that when reopening a security, the Official Closing Price from the prior day would no longer be a relevant reference price because the security has already opened for trading. Rather, because the security has been subject to a halt or pause before reopening, the Exchange believes that using the last sale price on the Exchange would be more representative of the most recent price of a security. A reopening price that would be more than 4% away from the last Exchange

sale price demonstrates a level of price movement in a security during the halt or pause that warrants the manual price discovery process for the reopening. If the reopening price were to be within 4% away from the last Exchange sale price, that security likely has not experienced as much price movement, and therefore an electronic reopening may be more appropriate.

- Proposed Rule 123D(a)(1)(B)(ii) would provide that if as of 9:00 a.m. ET, the E-mini S&P 500 Futures are plus or minus 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, a DMM could effect an opening electronically if the opening transaction would be at a price of up to 8% away from the Official Closing Price, as defined in Proposed Rule 123C(1)(e)—Equities, (for openings, but not reopenings) or the last sale price on the Exchange (for reopenings), without any volume limitations.

- Proposed Rule 123D(a)(1)(B)(iii) would provide that when reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B—Equities, if a pre-opening indication has been published in a security under Rule 15—Equities, a DMM may not reopen such security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication.

- The Exchange believes that because price volatility was likely the cause of such trading pause or halt, if the DMM publishes a pre-opening indication in a security for a reopening following such trading pause or halt, the reopening price should be within such pre-opening indication price range, regardless of whether the security is reopened manually or electronically. If the price moves away from the last pre-opening indication, the DMM should publish a new pre-opening indication to provide notice of the new price range.³⁰ Because the DMM would need to reopen a security within such price indication range, the Exchange believes it is appropriate to prohibit a DMM from reopening electronically if the reopening price were to be outside of the last-published pre-opening indication.

Similar to the new Applicable Price Ranges for pre-opening indications proposed in Rule 15(d) above, the

²⁷ Rule 123D does not require DMMs to open a security electronically; a DMM may determine that in the particular circumstances for a security, manually opening the security may be warranted, even if the price would be within the Applicable Price Range. For example, if a Floor broker has represented an order in the Crowd, the DMM will open a security manually.

²⁸ See Rule 123D(a)(2) (“Unless otherwise specified, references to an open or opening in paragraphs (a)(3)–(a)(6) of this Rule also mean a reopening following a trading halt or pause.”). See also proposed Supplementary Material .10 to Rule 15—Equities (“Unless otherwise specified in this Rule, references to an opening transaction include a reopening transaction following a trading halt or pause in a security.”)

²⁹ The Exchange also proposes a non-substantive amendment to change the term “stock” to “security” and to fix a typographical error to add the letter “m” before the word “may.”

³⁰ See proposed Rule 15(e)(2) (a pre-opening indication must be updated if the opening transaction would be at a price outside of a published pre-opening indication).

Exchange proposes to use a single percentage parameter for all securities, regardless of price. The Exchange also proposes to double those percentage parameters on days with extreme market-wide volatility, and would use the same standard for determining whether there is market-wide volatility as is proposed in Rule 15(d)(2), described above. Because the Exchange continues to believe that, if a pre-opening indication has been published, a security is better served if a DMM effects a manual opening, the Exchange proposes to apply percentage parameters to DMM automated openings that are tighter than the requirements for

publishing a pre-opening indication. In other words, if a pre-opening indication would be required under proposed Rule 15, the DMM would not be permitted to effect an opening electronically. To achieve this goal, the Exchange proposes that the percentage parameter on a regular trading day for DMM automated opens should be one percent lower than the percentage parameter for pre-opening indications on a regular trading day. And as with pre-opening indications, on a day with extreme market-wide volatility, the applicable percentage would be doubled.

The Exchange believes that the proposed conditions for when a DMM

may effect an opening electronically would reduce the number of manual openings and enable more securities to open closer to 9:30 a.m. ET, both on regular trading days and on extremely volatile trading days such as August 24, 2015.

Tables 3 through 5 below illustrate how many securities would not be eligible for a DMM to effect an opening electronically when applying the current and proposed percentage and volume parameters to NYSE trade data from October 2015 and NYSE trade data from August 24, 2015.

Table 3: Automated Open - Current Price and Volume Parameters

Exchange Closing Price	Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)					8/24/15				
			Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter
Under \$20.00	100K	\$0.50	1228	29	2.4%	9	21	1300	546	42.0%	506	95
\$20-\$49.99	100K	\$1.00	991	30	3.0%	13	19	1139	649	57.0%	646	67
\$50.00-\$32000	100K	\$2.00	534	35	6.6%	17	19	560	485	86.8%	485	70
Above \$32000	100K	1.50%	1	0	0.0%	0	0	1	1	100.0%	1	0
Total			2754	94	3.4%	39	59	3000	1682	56.1%	1639	232

Table 4: Automated Open - New Price % and Volume Parameters

Average Opening Volume in Previous Calendar Quarter	Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)					8/24/15				
			Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total	# Stocks over Price Parameter	# Stocks over Volume Parameter
100,000 shares or less	150,000+ shares	4.00%	2680	41	1.5%	36	8	2924	1682	57.5%	1671	86
Over 100,000 shares	500,000+ shares	4.00%	74	6	8.1%	3	3	76	71	93.4%	71	33
Total			2754	47	1.7%	39	11	3000	1753	58.4%	1742	119

Table 5: Automated Open - New Double Wide Price % if S&P 500 e-Mini Futures Change +/- 2% From Prior Day's Close

Volume Parameter	Applicable Price Change (More Than)	October 2015 (Average)			8/24/2015		
		Total # of Stocks Opening on Trade	# Stocks over Price Parameter	% Over Total	Total # of Stocks Opening on Trade	# Stocks over Price or Volume Parameter	% Over Total
none	8%	2754	11	0.4%	3000	573	19.1%

For example, as set forth in Table 3, using current price parameters and a 100,000 share volume parameter, in October 2015, 94 securities (13.4% of securities) on NYSE on average each day were not eligible to be opened by the DMM electronically. As demonstrated in Table 4, using the proposed 4% price and tiered volume parameters, a comparable 47 securities (1.7% of securities) on NYSE on average in October would not have been eligible to be opened by the DMM electronically.

With respect to the proposed volume parameters, the Exchange believes that

having a parameter tied to higher-than-average opening volume in a security would better reflect whether opening electronically would be appropriate. For example, as the data show in Table 4, on NYSE, there were 74 securities averaging daily opening volume over 100,000 shares in the previous quarter (3Q15) and three of those securities had opening volume of over 500,000 shares on an average daily basis in October. The Exchange believes that if a security has a higher-than-average opening volume on a quarterly basis without any corresponding price dislocation, then

the volume of shares trading on the opening for such securities is not representative of any volatility for that security, but rather, is a regular state of affairs that does not require a high-touch opening managed by a DMM on the trading Floor. Rather, such securities would benefit from being available for the DMM to open electronically in order to promote a fair and orderly opening at or near the open of trading. The Exchange further believes that securities with an average daily volume of over 500,000 shares at the open are the types of securities that most warrant the

DMM's high touch. Specifically, such large-sized openings are likely to be indicative of block-sized trades participating in the opening. The Exchange's high-touch model allows for greater price discovery for such securities by leveraging the Exchange's Floor broker agency community to solicit block-sized interest to participate in the opening.

As with pre-opening indications, the Exchange proposes to double the percentage parameter on trading days with extreme market-wide volatility and eliminate the volume parameter. As illustrated in Table 5, doubling the percentage parameter and eliminating the volume parameters would allow DMMs to open most NYSE securities electronically even during extreme market-wide volatility. As NYSE trade data from August 24, 2015 set forth in Table 3 illustrates, the current percentage parameters restricted DMMs from opening 1,753 securities electronically, which represents 58.4% of securities on NYSE.³¹ As set forth in Table 5, applying the proposed 8% percentage parameter would have allowed DMMs to open all but 573 securities electronically, which represents 19.1% of the securities traded on NYSE.

The Exchange also proposes to add a new paragraph (c) to Rule 123D entitled "Temporary Suspension of DMM Automated Opening Limitations or Floor Official Approval." Similar to proposed Rule 15(f), if the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend the prohibition on a DMM opening a security electronically if the opening transaction would be more than the price or volume parameters specified in proposed Rule 123D(a)(1)(B). This would be a new suspension authority that relates to the proposed new price and volume parameters for when a DMM may open a security electronically. The Exchange believes that having this temporary suspension authority would be appropriate for situations if the DMM is unable to open a security manually, either due to unavailability of 11 Wall Street facilities or because of systems or

technical issues with Floor-based tools for manually opening a security.

Proposed Rule 123D(c) would also provide that if the CEO of the Exchange determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly opening or reopening following a market-wide trading halt at the Exchange, and that absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange may temporarily suspend (i) the prohibition on a DMM opening a security electronically if the opening transaction will be more than the price or volume parameters specified in proposed Rule 123D(a)(1)(B); or (ii) the need under Rule 123D(b) for prior Floor Official approval to open or reopen a security following a market-wide trading halt. This proposed rule change is similar to authority in current Rule 48, which permits a qualified Exchange officer to temporarily suspend the need for prior Floor Official or prior NYSE Floor operations approval to open or reopen a security following a market-wide trading halt. While the Exchange expects that its other proposed changes to Rule 123D would make it unlikely that a complete suspension of prior Floor Official approval would be required, the Exchange believes it would be prudent for the CEO of the Exchange to retain the authority temporarily suspend such requirements for events that it cannot currently predict. The Exchange also proposes a new temporary suspension that correlates to the proposed new price and volume parameters for when a DMM may open a security electronically. The Exchange expects that this relief would be required if 11 Wall Street facilities were unavailable and DMMs would be required to open all securities remotely, and thus electronically.

Proposed Rule 123D(c)(2)–(3) are nearly identical to proposed Rule 15(f)(1)–(3), as described in greater detail above, with changes only to address that this proposed rule relates to the temporary suspension of the requirements for specified paragraphs of Rule 123D. Proposed Rule 123D(c)(2)–(3) is based on the same provisions of Rule 48 that proposed Rule 15(f)(2)–(4) is based on, which is discussed in greater detail above.

The miscellaneous and technical amendments proposed to Rule 123D are as follows:

- The Exchange proposes to amend Rule 123D(a)(5) (Pre-Opening Information) to change the citation to Rule 15(c) to 15(g) based on the proposed changes to Rule 15, described

above, and delete the word "either" and the references to Rule 123D.

- The Exchange proposes to delete the phrase "Halts in Trading" from the heading of Rule 123D(b).

- Also in Rule 123D(b), the Exchange proposes to delete the text relating to the dissemination of mandatory indications beginning with the sentence "If an unusual situation exists, such as a large order imbalance, tape indications should be disseminated, including multiple indications if appropriate with the supervision of a Floor Official" through and including the sentence "An Executive Floor Governor or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion." This rule text all pertains to Rule 123D Mandatory indications, which, as discussed above, would be governed by proposed Rule 15.

- The Exchange proposes to add a new heading (d) entitled "Halts in Trading" before the sentence "Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials" in current Rule 123D(b) and change current heading (c) (Equipment Changeover) to (e).

- Finally, in current Rule 123D(c) (proposed Rule 123D(e)), to reflect that all information relating to pre-opening indications, including the Applicable Price Ranges and Reference Prices, are now described in Rule 15, the Exchange proposes to delete the phrase "a significant order imbalance (one which would result in a price change from the last sale of one point or more for stocks under \$10, the lesser of 10% or three points for \$10–\$99.99 and five points if \$100 or more—unless a Floor Governor deems circumstances warrant a lower parameter) develops" and add the phrase "a pre-opening indication would be required to be published" in its place.

Rule 48

The Exchange proposes to delete Rule 48 in its entirety. As discussed above, the Exchange is proposing changes to Rules 15 and 123D that it believes will allow DMMs to publish pre-opening indications in a manageable number of securities, even on days of high volatility, which would promote transparency regarding opening prices at the Exchange. In addition, and as described above, the Exchange is incorporating into Rules 15 and 123D authority for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications, the pricing and volume limitations for a

³¹ On August 24, 2015, DMMs also chose not to open securities electronically, even if they would have been priced within the current price parameters.

DMM to open a security electronically, and for a DMM to obtain Floor Official approval under Rule 123D(b) when opening or reopening a security, if the CEO of the Exchange determines that such relief is necessary to the ability of DMMs to open the securities and to the operation of the Exchange. Accordingly, the Exchange believes that the Rule 48 is no longer necessary.

Conforming and Technical
Amendments—Rules 80C and 9217
Rule 80C

The Exchange proposes conforming amendments Rule 80C(b)(2), which governs a Trading Pause under the LULD Plan.

First, Rule 80C(b)(2) requires that the Exchange re-open the security in a manner similar to the procedures set forth in Rule 123D following a Trading Pause (as defined therein). The Exchange proposes to add a reference to Rule 15 to Rule 80C(b)(2), so that the requirement to re-open would be in a manner similar to Rules 15 and 123D.

Second, the Exchange proposes to delete subdivision (A) of Rule 80C(b)(2) in its entirety and mark the deleted text as “Reserved.” As noted above, the requirements for reopening a security following a trading pause set forth in Rule 80C would be codified in proposed Rule 15(d)(6).

Rule 9217

The Exchange also proposes to amend Rule 9217, which sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as set forth in Rule 9216(b). Rule 9217 permits a summary fine for violations of Rule 123D requirements for DMMs relating to openings, reopenings, delayed openings, trading halts, and tape indications. The Exchange proposes to delete the clause “tape indications” to reflect elimination of mandatory indications from Rule 123D. The Exchange believes this proposed change would add transparency and clarity to the Exchange’s rules.

* * * * *

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,³² in general, and furthers the objectives of Section 6(b)(5)

of the Act,³³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that streamlining and consolidating pre-opening indications into a single rule (Rule 15) from two (Rules 15 and 123D) would remove impediments to and perfect the mechanism of a free and open market because it would set forth in a single rule the requirements for pre-opening indications, thereby promoting transparency by using consistent terminology for rules governing equities trading and ensuring that members, regulators, and the public can more easily navigate the Exchange’s rulebook.

The Exchange believes that adopting new single-wide (5% change) and double-wide (10% change if S&P 500 futures move 2%) percentage parameters for the publication of pre-opening indications would remove impediments to and perfect the mechanism of a free and open market by requiring issuance of more pre-opening indications than currently during times of market stress, thereby increasing the amount of information available in the pre-market and improving the quality of price discovery at the opening. The proposed rule therefore promotes just and equitable principles of trade because it would expand the amount of pre-opening information available to the marketplace, thereby promoting transparency. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that amending Rule 123D to specify when a DMM may effect an opening electronically would remove impediments to and perfect the mechanism of a free and open market by promoting transparency in Exchange rules regarding under what circumstances a DMM may effect an opening electronically. The Exchange believes that the proposed parameters for when a DMM may open a security electronically, which would be 4% on regular trading days and doubled to 8% in times of market stress, would remove impediments to and perfect the mechanism of a free and open market by reducing the number of manual openings and enabling more securities to open closer to 9:30 a.m. ET on extremely volatile trading days, thereby providing customers and the investing public with greater certainty of a timely

open in circumstances of extreme market stress. The Exchange further believes that the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

The Exchange believes that using the last Exchange sale price as a reference price for reopenings would 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 because using the last sale price on the Exchange would be more representative of the most recent price of a security from before the halt or pause. In addition, the Exchange believes that if a security were to reopen more than 4% (or 8% on a more volatile trading day) from that reference price, such reopening would likely benefit from the manual price discovery process. The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market to provide that a DMM may reopen a security electronically if the reopening transaction would be at a price outside of the last-published pre-opening indication when reopening a security following a trading pause under Rule 80C or a market-wide halt under Rule 80B and a pre-opening indication has been published under Rule 15.

The Exchange believes that deleting Rule 48 and moving the applicable provisions to Rules 15 and 123D would remove impediments to and perfect the mechanism of a free and open market by reducing reliance on Rule 48 during extremely volatile trading days. Rather, as proposed, the need for the CEO of the Exchange to temporarily suspend either pre-opening indications or the need for prior Floor Official approval before opening or reopening a security would be under more narrow circumstances of when a Floor-wide event would impair the Exchange’s ability to conduct a fair and orderly open or reopening. As discussed above, the proposed amendments to Rule 15 and 123D to provide for parameters on days with extreme market-wide volatility would obviate the need for the current Rule 48 ability to lift the requirements for pre-opening indications or prior Floor Official approval during extreme market-wide volatility. The Exchange further believes that the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

proposal is also designed to protect investors as well as the public interest.

The Exchange believes that making corresponding conforming changes to Rules 80C and 9217 would remove impediments to and perfects the mechanism of a free and open market by reducing potential confusion and adding transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather promote greater efficiency and transparency at the open of trading on the Exchange. The Exchange believes the proposed rule change will ease a burden on competition by providing for similar standards for the opening process on the Exchange as have been approved for the NYSE, which currently operates on the same trading platform as the Exchange.

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 Act³⁴ and Rule 19b-4(f)(6) thereunder.³⁵ 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)³⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁷ 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 waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change is based on the approved rules of the NYSE and immediate effectiveness would enable the Exchange to implement changes to its rules that are designed to promote efficiency and transparency in the opening process. It would also enable the Exchange to implement the proposed changes to its opening process at the same time as similar changes are being implemented on the NYSE, which the Exchange believes would promote the protection of investors and the public interest. In addition, because the technology is ready for both this proposed rule change and the changes described in the NYSE Approval Order, the Exchange believes that waiver of the operative delay will allow for the Exchange to implement the approved changes to the opening process, without delay, at the same time that it implements the same changes to the NYSE rules. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, because the proposal is reasonably designed to promote efficiency and transparency in the opening process, and because it would allow the proposal to be implemented concurrently with the parallel changes to the NYSE rules that have already been approved by the Commission. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³⁸

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 under Section 19(b)(2)(B)³⁹ 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. Please include File Number SR-NYSEMKT-2016-79 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-NYSEMKT-2016-79. 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 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

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 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.

³⁶ 17 CFR 240.19b-4(f)(6).

³⁷ 17 CFR 240.19b-4(f)(6)(iii).

³⁸ 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).

³⁹ 15 U.S.C. 78s(b)(2)(B).

available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–79 and should be submitted on or before September 21, 2016.

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

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–20880 Filed 8–30–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78694; File No. SR–BX–2016–047]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Short Term Option Series Program

August 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 25, 2016, NASDAQ BX, Inc. (“BX” or “Exchange”) 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 expand the Short Term Option Series Program to allow Wednesday expirations for SPY options.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqbx.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 Exchange proposes to amend BX Rules at Chapter I, Section 1(a)(60) and Chapter IV, Section 6 at Commentary .07 to expand the Short Term Option Series Program to permit the listing and trading of options with Wednesday expirations.

Currently, under the Short Term Option Series Program, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five consecutive Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire (“Short Term Option Series”). The Exchange is now proposing to amend its rule to permit the listing of options expiring on Wednesdays. Specifically, the Exchange is proposing that it may open for trading on any Tuesday or Wednesday that is a business day, series of options on the SPDR S&P 500 ETF Trust (SPY) to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday SPY Expirations”).³ The proposed Wednesday SPY Expiration series will be similar to the current Short Term Option Series, with certain exceptions, as explained in greater detail below. The Exchange notes that having Wednesday expirations is not a novel proposal. Specifically, BOX Options Exchange LLC (“BOX”) recently received approval to list Wednesday expirations for SPY options.⁴

In regards to Wednesday SPY Expirations, the Exchange is proposing to remove the current restriction preventing the Exchange from listing Short Term Option Series that expire in the same week in which monthly option series in the same class expire. Specifically, the Exchange will be allowed to list Wednesday SPY Expirations in the same week in which monthly option series in SPY expire. The current restriction to prohibit the

expiration of monthly and Short Term Option Series from expiring on the same trading day is reasonable to avoid investor confusion. This confusion will not apply with Wednesday SPY Expirations and standard monthly options because they will not expire on the same trading day, as standard monthly options do not expire on Wednesdays. Additionally, it would lead to investor confusion if Wednesday SPY Expirations were not listed for one week every month because there was a monthly SPY expiration on the Friday of that week.

Under the proposed Wednesday SPY Expirations, the Exchange may list up to five consecutive Wednesday SPY Expirations at one time. The Exchange may have no more than a total of five Wednesday SPY Expirations listed. This is the same listing procedure as Short Term Option Series that expire on Fridays. This means, under the proposal, the Exchange would be allowed to list five Short Term Option Series expirations for SPY expiring on Friday under the current rule and five Wednesday SPY Expirations. The interval between strike prices for the proposed Wednesday SPY Expirations will be the same as those for the current Short Term Option Series. Specifically, the Wednesday SPY Expirations will have \$0.50 strike intervals.

Currently, for each Short Term Option Expiration Date,⁵ the Exchange is limited to opening thirty (30) series for each expiration date for the specific class. The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective short term option rules; the Exchange may list these additional series that are listed by other exchanges.⁶ The thirty (30) series restriction shall apply to Wednesday SPY Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY options expiring on Wednesdays.

As is the case with current Short Term Option Series, the Wednesday SPY Expiration series will be P.M.-settled. The Exchange does not believe that any market disruptions will be encountered with the introduction of

⁵ BX may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five consecutive Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (“Short Term Option Expiration Dates”). See BX Rule Chapter IV, Section 6 at Commentary .07.

⁶ See BX Rule Chapter IV, Section 6 at Commentary .07.

⁴⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See BX Rule Chapter IV, Section 6 at Commentary .07.

⁴ See Securities Exchange Act Release No. 78668 (SR–BOX–2016–28) (pending publication in the Federal Register).